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ABSTRACT

This paper, one in a series about the priorities of the professoriate, explores some creative employment practices which will stimulate campus discussions of faculty employment policies and practices in four areas: (1) alternative career paths, (2) workload and productivity, (3) peer review, and (4) academic freedom and employment security. In each of these four areas, the discussion covers examples outside the academy and inside the academy concludes with a summary and questions for discussion. Under the rubric of alternative career paths, examples are drawn from law and accounting firms, and the discussion ranges from problems associated with two-tiered systems to status differentials to recruiting, rigor, and productivity. In the area of workload and productivity, examples are drawn from medicine and law. Also noted are academe's concerns with adjusting faculty work and retirement incentives. The discussion of peer review draws analogies between post-partner and post-tenure reviews, citing examples from think tanks and law firms as outside-the-academy practices. The discussion of academic freedom and employment security again draws examples from law firms and think tanks as analogous situations. A number of the examples are highlighted by boxed case studies. (Contains approximately 80 references.) (CH)

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ED 424 823

Employment Practices in the Professions

Fresh Ideas From Inside and Outside the Academy

By C. Ann Trower

Senior Researcher, Project on Faculty Appointments,
Harvard Graduate School of Education

INQUIRY # 13

HE 031 677

FORUM ON Faculty Roles & Rewards

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About the New Pathways Working Paper Series

The Forum on Faculty Roles & Rewards is a special program of the American Association for Higher Education (AAHE). It works with faculty leaders, senior academic administrators, trustees, legislators, and others interested in refocusing faculty priorities to address pressing institutional and societal needs. To advance this agenda, AAHE initiated a project called "New Pathways: Faculty Careers and Employment for the 21st Century." The New Pathways Working Paper Series addresses key issues related to changing faculty careers and employment arrangements; the series consists of 14 papers to be released during 1996-1998.

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FOREWORD

In 1992, AAHE entered into the growing national debate about the priorities of the professoriate by establishing the Forum on Faculty Roles & Rewards — a program that sponsors an annual national conference, issues publications, and serves as a general clearinghouse. Thus, when tenure surfaced in the spring of 1994 as a major issue of conversation and media attention, we became an interested party in the discussion.

On reflection, we decided that what was needed was not another familiar debate about the pros and cons of tenure but a new dialogue — a dialogue in which tenure was placed in a larger context of fresh thinking about two questions: What career paths make sense for the professoriate of the 21st century? What varieties of employment arrangements might most appropriately undergird these paths?

We also concluded that what might best help campuses work through these questions was not more philosophical argument but concrete options: practical ideas about new career paths and imaginative employment arrangements that campuses could try on for size.

AAHE's New Pathways project seeks to carry out that agenda. Project activities include (1) sponsoring forums to advance the dialogue; (2) serving as a general clearinghouse; and (3) initiating investigations into selected, particular issues.

Central direction for the project is provided by a three-person team: R. Eugene Rice, director of AAHE's Forum on Faculty Roles & Rewards; Richard Chait, professor of higher education, Harvard Graduate School of Education; and Judith Gappa, professor and vice president for human relations at Purdue University. Richard Chait's part of the project, which focuses on creative employment arrangements, is supported by a generous grant from the Pew Charitable Trusts.

The project team in turn benefits from the wise counsel of a four-person national advisory panel: Richard Lyman, president emeritus, Stanford University (chair); Andrew Hurwitz, attorney; Ejner Jensen, professor of English and special counsel to the president, University of Michigan; and Linda Wilson, president, Radcliffe College.

We wanted to make our own investigations quickly available in a form that was affordable, easily duplicated, and suggestive of what they really are: works in progress, intended to stimulate and enrich further discussion.

Russell Edgerton
President 1977-97, American Association for Higher Education
March 1996

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Employment Practices in the Professions: Fresh Ideas From Inside and Outside the Academy[1]

by C. Ann Trower[2]

Who says that you can't teach an old dog new tricks? The professions are replete with examples of changes to traditional employment practices. No sector is static. In recent days especially, every one has been compelled to reexamine (and in some cases reengineer) its traditional employment policies to be more responsive to external and internal constituents, to increase financial and market flexibility, and to increase organizational agility. No profession enjoys immunity from environmental pressures such as increased competition, financial constraints, and revolutionary technology. The box "**Principal and Teacher Tenure**" on page 3 and the following headlines are representative of responses to these pressures:

In medicine,

> "In Pact With Columbia, New York Ties Pay to Hospital Productivity — New York City's public hospital agency has won a contract agreement with its teaching affiliates that for the first time ties pay to productivity, giving the hospital agency more control over costs and the quality of care. ... Columbia also agreed to pay fines if it fails to meet performance standards." (E.B. Fein, *The New York Times,* January 8, 1997)

In the judiciary,

> "Many New York City Judges to Get Annual Reviews — For the first time, many trial judges in New York City will now undergo annual evaluations by senior judges and could face demotion if they handle too few cases, make too many mistakes, or generate too many complaints." (J. Sullivan, *The New York Times,* January 8, 1997)

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[1] This paper is intended to be suggestive in its scope, not comprehensive. The specific policies and practices are presented to introduce inventive ideas for consideration on campuses.

[2] I gratefully acknowledge the research assistance and editing skills of Holly Madsen, project coordinator, Project on Faculty Appointments, Harvard Graduate School of Education.

In law,

> "Reinventing Partnership: You May Not Make Partner, But New Paths Now Exist — An estimated 40 percent of law firms nationwide have added or are adding rungs to the traditional 'up or out' ladder — an associate either becomes a partner or leaves — where it is becoming acceptable, even desirable, to stop. Big Six accounting firms are now following the lead of the legal profession." (A. Saltzman, *U.S. News & World Report,* May 7, 1990)
>
> "Are Firms Ready for Peer Reviews? — Long used in the medical and accounting professions, the peer review process — in which partners monitor and evaluate the job performances of their colleagues — is taking hold in the legal field. Some firms tie their reviews to compensation decisions; others keep the two separate. At least one firm has clients, rather than partners, do the reviewing." (M. Middleton, *The National Law Journal,* August 24, 1987)

In academe,

> "The New U: A Tough Market Is Reshaping Colleges — Universities are rethinking the big lecture halls, faculty tenure, discrete academic departments, and other features that have defined traditional institutions for a century. They are designing curriculums more relevant to employers, communities, and students. ... [At the University of Florida,] departments that meet quality and productivity criteria win shares of $2 million in discretionary funding." (K.H. Hammonds et al., *BusinessWeek,* December 22, 1997)
>
> "University for Working Adults Shatters Mold — The University of Phoenix [the largest private university in the United States] set itself apart with its unwavering corporate orientation [e.g., paying taxes rather than accepting subsidies, and renting space rather than buying buildings]." (E. Bronner, *The New York Times,* October 15, 1997)
>
> See also the box "**The University of Phoenix Faculty Recruitment and Selection**" on page 4.

INTRODUCTION

Colleges and universities are under enormous pressure to change. In his article "The Ivory Tower Under Siege" in *The New York Times,* Honan (1998) states that the current attack on higher education is the greatest ever: "Faculty bashing is on the rise. The main complaints are that faculties have usurped control of educational institutions and run them chiefly for their own benefit ... that they are accountable to no one, and that colleges have failed to increase productivity and that they cost too much" (4A33). In a strong call for changes in the way academic institutions operate, a recent report declared, "Unless the higher education sector changes the way it operates by undergoing the

Principal and Teacher Tenure

Higher education is not the only arena for tenure reform. On the cusp of the twenty-first century, tenure for principals and teachers in New York State may be at risk. Rudy Crew, chancellor of New York City's public schools, believes that principals should work under five-year contracts instead of lifetime job guarantees. A contract system, Crew argues, would make it easier to "reward good performance and get rid of underachievers" (*The New York Times*, editorial, November 11, 1997, p. A38). Mayor Rudolph Giuliani believes tenure, reinforced by state law, shelters the "mediocre middle," and therefore the legislature should put an end to "a tenure system that shields too many slipshod principals from accountability" (A38).

Senator Alfonse D'Amato also is pushing for an end to tenure for public school teachers in New York (J. Dao, *The New York Times,* December 18, 1997, p. A28), a view supported by the New York State School Boards Association. However, proponents of changes in the tenure laws must confront 386,000 members of the teachers union in the state. Under state law now, teachers who pass a three-year probationary period are granted tenure and can only be dismissed for incompetence, insubordination, physical or mental disability, or neglect of duty. As a result of a "cumbersome and expensive" process, only seven teachers were dismissed in New York last year (A28). D'Amato, like Crew, favors a system of contracts and due process.

The University of Phoenix Faculty Recruitment and Selection

It's a university with 42,000 students but no book-filled library, no gymnasium or stadium, no labs, no residence halls, no student union. Most of its students earn a degree without ever setting foot in a classroom or watching a professor shuffle lecture notes at the lectern. Enrollment is growing at 20% a year, with tuition of $6,500. Its owner is a for-profit corporation whose shares recently traded at a lofty 63 times earnings, a sign of Wall Street's optimism about the institution's future. It's the University of Phoenix (UOP).

Catering to working adults, UOP accepts no student under the age of 23. Accredited for more than twenty years, the institution offers degrees mostly in business, information technology, health, and education. While almost all of its faculty members teach at UOP part-time while working full-time outside of higher education, the university does have a core of seventy-nine full-time faculty members, a quarter of whom hold doctorates. In the main, its practitioner faculty teach students over the Internet and in classes limited to fifteen to twenty students.

Many traditional academics disdain UOP and similar institutions as "diploma mills." Their scorn originates in concerns about distance education generally, but even more so from skepticism about UOP's many part-time faculty, many without doctorates, nearly all with second jobs elsewhere. But the University of Phoenix goes to great lengths to select, orient, develop, and evaluate its faculty — in an impressive process that appears to be at least as rigorous as that of most colleges and universities.

Prospective faculty members are carefully screened by highly trained and credentialed academics. Candidates must, at a minimum, have a master's degree and five years of classroom-like relevant experience. A content expert asks each candidate standard interview questions developed by UOP's faculty to assess knowledge of topics, theories, and pedagogy; then the candidate makes a class-like presentation to a group of other prospective and current faculty members. Candidates must also take part in a leaderless group activity that demonstrates how they interact in an unscripted environment, and must document extensively their content knowledge and pertinent experience for each course they desire to teach. This screening process weeds out some 60-70% of candidates.

Another 8-10% of faculty candidates do not make it through the next selection phase: a six-week training course. The course includes Internet training; study/small-group management; information on grading, evaluation, and giving feedback; human equity/gender sensitivity training; writing-across-the-curriculum; facilitation skills; and information about administrative policies and copyrights. Finally, the potential faculty members who remain must apprentice with an experienced UOP instructor for each course they intend to teach, taking the course and working with the faculty mentor throughout.

Once they begin teaching at UOP, all instructors undergo review by students after every course, peer review on their first or second course, peer review after every fifteen courses, and an administrative review every two years. Faculty-development activities are available on an ongoing basis.

UOP's review of student learning outcomes is equally comprehensive. In fact, a team from the American Productivity & Quality Center, led by the country's foremost assessment expert, Peter Ewell, recently awarded an APQC "Best Practices Partner" in "Measuring Institutional Performance Outcomes" to the university. UOP students take a series of exams (including cognitive assessment, critical-thinking assessment, and communication skills inventory) upon admittance and again before graduation, so that the university can do pre- and post-learning gains assessments.

kind of restructuring and streamlining that successful businesses have implemented, it will be difficult to garner the increases in public funding needed to meet future demands" (Council for Aid to Education 1997: 3). Among the report's recommendations are that higher education (1) make major structural changes in its governance systems, (2) improve performance-based assessment of student learning, (3) define and measure faculty productivity, (4) improve internal accountability in financial management, (5) pursue greater mission differentiation, (6) streamline services, and (7) be more responsive to the changing needs of constituents.

The message of the report was clear: Greater flexibility is in order, and the primary institutional roadblock to change is an "outmoded" governance structure. In the traditional academic governance structure, tenured faculty members determine what is taught, to whom, and by whom. According to the report, tenured faculty make all the curricular decisions, but they do not ask, or answer, difficult questions about departmental and institutional comparative advantage. They do not address, for example, the difference in contribution to the mission between adding a classics professor or a mathematics professor, or acquiring additional geophysics lab equipment, or expanding the student counseling program, or improving the physical plant. Currently, faculty in highly decentralized departments make decisions in a "maze of hierarchical structures operating independently of one another" and "administrators report up or down their narrow chain of command, largely ignorant of what those in other parts of the institution are doing" (16).

What is needed instead is a "systemwide process for reallocating resources among departments and other parts of the institution. Just as successful companies have learned to focus on their core competencies ... higher education institutions need to reexamine their missions and streamline their services" (16). On that score, there are lessons to learn and innovations to consider from other professions, and from particularly innovative colleges and universities as well.

While this report does not mention tenure as much as "outmoded" governance structures, part of the current attack by others on higher education focuses squarely on tenure. Traditionally, tenure has been viewed as a necessary inducement to attract scholars to a profession that has historically been less remunerative than some others. In return for forgoing higher salaries, faculty members would be free to pursue "the truth," wherever it led, without fear of reprisal. According to the American Association of University Professors:

> *Tenure is a means to a certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are*

> *indispensable to the success of an institution in fulfilling its obligations to its students and to society.* (AAUP 1969: 1-2)

But today, many are asking questions about the meaning and necessity of tenure:

- Driven by bottom-line concerns, "academia's once sacred cow [tenure] is being poked, prodded, and in some cases, skewered." (De Pasquale, Hendricks, and Keiger 1997: 16)
- From Tulane University's provost: "Tenure is under fire across the country ... viewed by many as the single biggest impediment to change in universities. The level of job security enjoyed by faculty ... is unjustified relative to other sectors." (Gilliland 1997: 31)
- James Carlin, chairman of the Massachusetts Board of Higher Education, lambasted colleges as "managerially dysfunctional" and "devoid of accountability." He referred to faculty tenure as "an absolute scam." (in Healy 1997: A41-A42)

A report for the American Council on Education (Harvey and Immerwahr 1995) suggested that higher education has in the past enjoyed a "huge reservoir of public goodwill"; however, now "sticker shock" is a real issue since the general public believes that the cost of college has escalated beyond the reach of the middle class. Business leaders, many of whom serve on boards of trustees and in state legislatures, are growing increasingly skeptical about academe's "standard practice":

> *Tenure became the object of particularly caustic comments. Tenure may have enjoyed more support when the nation's colleges and universities were surrounded by an aura of exclusivity. But that aura is long gone. These leaders are not convinced that higher education is so different from their own enterprises that a completely counterintuitive system — ostensibly designed to provide academic freedom, but in their view largely designed to provide job security — is needed to encourage high performance.* (Harvey and Immerwahr 1995: 13)

During periods of economic growth and prosperity, public officials "may turn a blind eye to claims that the campus does not run a very tight ship," but they can no longer "afford to overlook any allegations of poor or unproductive use of resources" (13). Tenure "exacts a price in productivity that many find unacceptable in hard financial times" (1997: 138), wrote Donald Kennedy, president emeritus of Stanford University. And faculty members have felt the pinch. The National Survey of Postsecondary Faculty (NSOPF-93) revealed that one half of full-time instructional faculty felt that the pressure to increase their workload had intensified in recent years, a pressure more pronounced at public research and doctoral institutions (U.S. Department of Education 1997).

Despite the numerous attacks on tenure, "significant modifications in human resources practices in universities ... are needed ... [but] eliminating tenure would be counterproductive" (Gilliland 1997: 31). Yarmolinsky (1997) agrees: "Tenure isn't going to go away. The roots of lifetime

tenure are too deep ... and even where it might be torn out, the noxious weed of faculty unionization would likely replace it. But tenure isn't going to stay the way it is either. The forces impinging on the academy will see to that." Says Kennedy (1997): "We must confront the question whether the institution of tenure as we have come to know it is likely to survive its present trials: uncapped mandatory retirement, financial stringency, and public disapproval" (138).

One "solution" to the academy's problems, frequently advanced by those outside it, is for higher education to behave more like business. How many times have trustees, legislators, parents, or other taxpayers posed the question, "Why can't academe be more like business?" In the article "'Reinventing' the University: Object Lessons From Big Business," Mahoney (1997) wrote, "I had a dream the other night — a nightmare. I dreamed that once again I was chief executive officer of the Monsanto Company. What made the dream a nightmare was that I was supposed to run the corporation like a university" (B4). Mahoney continued by asking troublesome and prickly rhetorical questions: Can you dispose of unproductive programs? What is the primary goal of the institution? If you were forced to choose research or teaching, which would it be? What about sharing administrative services with neighboring institutions? Why not hire outside contractors? How can we go about reforming tenure?

HOW MANY TIMES HAVE TRUSTEES, LEGISLATORS, PARENTS, OR OTHER TAXPAYERS POSED THE QUESTION, "WHY CAN'T ACADEME BE MORE LIKE BUSINESS?"

While these are provocative questions, some would argue that they are not entirely relevant, because academic institutions do not function like for-profit economic entities. Gordon Winston, an economist of higher education at Williams College, eloquently addressed the central differences between academic institutions and firms: "There are half a dozen *economic* characteristics that make colleges and universities different — fundamentally, economically different — from the for-profit business firms that shape economists' theories and trustees' and legislators' intuitions" (1997: 34).[3] First, nonprofit firms can generate profits, but those profits are not distributed to stockholders — in fact, there are no "owners." Second, there is reduced pressure on management to operate efficiently. Third, colleges and universities are an odd "donative-commercial"

[3] The first three characteristics concern nonprofit firms in general and are attributed to Yale Law School professor and economist Henry Hansmann. The second set of three characteristics are specific to colleges and universities.

combination and do not have to charge a price that covers their production costs. Fourth, people do not know exactly what they are buying. Fifth, there is a "very strange technology" — a customer-input, meaning colleges can buy one important input to their production *only* from their own customers. And sixth, there are enormous differences in the prices institutions charge for a dollar's worth of their product.

Certainly, the characteristics that differentiate institutions of higher education from for-profit firms must be considered by policymakers as they weigh new approaches to costs, prices, production technologies, products, markets, and employment arrangements. On the other hand, that academe has certain unique properties does not mean that business practices, especially in the professions, are irrelevant or inapplicable. To be so myopic does little to solve the challenges colleges confront and, regrettably, does much to reinforce an image of the academy as insulate and parochial. As Jensen (1997) wrote:

> *Elements of resistance arise ... from some fundamental objection to placing the university in a context in which it is called upon to model its workings on those of the other major institutions of our society ... especially business. At the foundation of this objection is the view that the university is a fundamentally different sort of organization, one with a unique and unusually valuable culture, an organization that can be fully understood and directed only by those who have internalized its values. If, in the face of such claims, outsiders express puzzlement or disbelief or, worse yet, doubts about the efficacy of the university's operations, or its structures, or the practices of its members, the answer is ready to hand: "You simply don't understand."* (85)

PURPOSE OF THIS PAPER

This paper does not examine the pros and cons of tenure; that has been done elsewhere ad nauseam, many would contend. Rather, it explores creative employment practices found in other professions and in particularly innovative pockets of academe that could enrich discussions within higher education in four areas: (1) alternative career paths, (2) workload and productivity, (3) peer review, and (4) academic freedom and employment security.

Therefore, rather than ask why can't academe be more like business, we are guided here by a more constructive question: *What can we learn from other professions that may expand the employment options available to academic institutions and faculties?* Indeed, "although the private sector may appear to be an unlikely source of insight into the pros and cons of tenure, experiences there over the last fifteen years can yield both ideas and 'lessons learned'" (Gilliland 1997: 31). Given that several other professions face issues comparable to the challenges academe confronts, innovative employment practices in those

other professions may be instructive. Our aim, then, is to put new ideas into play and stimulate campus discussions of faculty employment policies and practices.

(1)
Alternative Career Paths

Outside the Academy

Law firms. The legal profession has changed substantially over the past twenty-five years. Law firms historically used an "up-or-out" approach similar to that for academic tenure: New lawyers worked hard for six to ten years as associates, then at some point the firm invited them either to become partners or to leave the firm. This system seemed "odd" to some, in that law firms fired many associates "rather than merely retaining them in the position in which they already have been shown to be competent and profitable. ... The puzzle is why [the firm] gives up the potential profits from continuing to employ the associate in a capacity other than partner" (Gilson and Mnookin 1989: 572).

Major challenges have forced most law firms to reexamine this traditional system: (1) increased competition; (2) pressures on partner earnings; (3) market demand for specialties; (4) the increasing need to generate new business; (5) new approaches to service delivery and higher customer expectations; (6) a revival of the entrepreneurial spirit; (7) the segmentation of partner rewards; (8) the need for associate training, development, and motivation; (9) changing expectations of partners and associates; and (10) the evolution of various forms of governance (Heintz and Markham-Bugbee 1986). The parallels to higher education are self-evident.

Under these pressures, law firms sought alternatives to an up-or-out structure that did not allow room for firms to retain valuable candidates "without giving all 'qualified' candidates the same equity status regardless of entrepreneurship, business-generating skills [rainmaking], specialty, or function" (Heintz and Markham-Bugbee 1986: 2). Such an alternative necessarily prompted "the designation of different roles and responsibilities with appropriate performance criteria for each, designation of different levels and titles to reflect roles and responsibilities, different levels of compensation and equity awarded for different contributions, new criteria for admission to the designated levels, control over voting rights, and a broader definition of 'what makes a partner a partner '" (2).

Almost *half* of the nation's largest law firms have replaced the conventional up-or-out system with various forms of tiered partnerships (Torry 1996), affording the firms more latitude. Lawyers who do not want an equity partnership also benefit from the creation of new categories of employment. For some, partnership's potentially higher salary and higher status fail to offset its greater exposure to lawsuits and larger responsibility for the firm's financial condition (Cowan 1992); others believe that the extra compensation does not justify the enormous personal sacrifices of long hours and constant demand to place firm ahead of family. One woman denied an equity partnership was offered instead a "corporate counsel" position, an arrangement that allowed her to remain in a work environment she enjoyed, to consider having another child, and to enjoy a more relaxed pace (Galante 1983). Had an alternative career path not been available, her choices would have been to stay at home or look for a new job. (See the box "**Moving Away From the Mommy Track**" opposite.)

ALMOST *HALF* OF THE NATION'S LARGEST LAW FIRMS HAVE REPLACED THE CONVENTIONAL UP-OR-OUT SYSTEM WITH VARIOUS FORMS OF TIERED PARTNERSHIPS, AFFORDING THE FIRMS MORE LATITUDE.

Heintz and Markham-Bugbee (1986) have highlighted the strengths and weaknesses of five different models for partnership (for a synopsis, see the box "**Five Models for Law Firm Partnership Structure**" on pages 12-13). In a two-tiered partnership system, becoming an *equity partner* (also known as a *capital partner*) makes the lawyer one of the firm's owners, who share in the firm's profits and are responsible for the firm's liabilities. Partners in the lower tier, sometimes called *income* or *nonequity partners,* are paid a straight salary and cannot be held personally accountable if the firm fails. Such arrangements recognize that not everyone can or wishes to develop all the skills or assume all the burdens required of equity partners (Krocheski and Santangelo 1993: 36).

The Boston firm of Gaston Snow & Ely Bartlett decided to reinvent the two-tiered system to add further flexibility. There, "star" associates may skip the nonequity, income partner tier and become equity partners directly; and nonequity partners may proceed to equity status at their own pace or not at all (Carbonara 1987: 14).

In another, now common employment arrangement, some firms designate certain attorneys *of counsel.* Historically, *of counsel* referred to retired partners who wanted to keep a hand in the practice; now it might designate (1) a partner with a reduced load; (2) a probationary partner-to-be; (3) a

Moving Away From the Mommy Track

The standard in law firms has been to design policies and practices for "a worker who is totally committed to the firm and who has no family or a family with a wife at home to care for it" ("Why" 1996:1377). For women, who traditionally bear the weight of family responsibilities, such practices and expectations often are major obstacles on the road to the higher ranks in the legal profession — and in academe, as well (Chait 1995).

In that same 1996 article, *Harvard Law Review* argued that to attract top legal talent, law firms can no longer ignore the needs of women — who constitute more than 40% of law school graduates — most notably, their disproportionate caregiving responsibilities to children and elderly parents. In large part, it is these obligations that have led women to either "leave law firms in search of more family-friendly institutions or step off the partnership track and onto the mommy track" (1375-1376).

But many consider the thorniest issues facing female attorneys to be liabilities for the entire law profession, including a workplace culture that demands an exhaustingly high number of billable hours each year, a stigma attached to part-time work, and a single-minded focus on the bottom line at the expense of developing its human capital (Galanter and Palay 1991: 99). The "time famine" phenomenon has consequences that extend beyond the careers of women. "Lawyers without the time to participate in family and community life, pro bono work, outside interests, continuing legal education, or scholarship become isolated and lose the sense of the texture of life or their ability, as lawyers and as human beings, to respond to people's and society's needs" ("Why" 1996: 1379).

Legal scholars are focusing attention on the need to embrace gender-neutral approaches to attorney training and professional development. UCLA law professor Carrie Menkel-Meadow and the *Harvard Law Review* article both propose modifications within the current framework, as well as a thorough structural change. Their proposals include these:

- All attorneys should be treated as investments in the long-term human capital of the firm. The bottom line should take second place to the needs of people.
- Working hours should have a limit. Law firms should reevaluate their policies on part-time status and other employment alternatives.
- Firms should develop mentoring systems to provide new attorneys contact with experienced lawyers and those from different ethnic, racial, or gender groups.
- Firms would benefit from employer-assisted day-care programs by providing attorneys more flexibility and security.
- Law firms should consider alternative billing procedures, such as value billing and fixed-fee billing. Value billing takes into account the complexity of a matter and the experience and knowledge of the attorney in addition to the time devoted to the project. Fixed-fee billing allows a firm to break large cases into smaller components and charge on a per-task basis, rather than per hour.

— Holly Madsen

Five Models for Law Firm Partnership Structure

Model I: Junior Partners/Senior Partners. A modified version of the up-or-out policy, this structure provides a stepping stone *(junior partner)* on the way to *senior partner* or to "out." Some firms refer to these distinctions as *noncapital* and *capital* partners, respectively. In this scenario, senior partners have equity participation, and there are no permanent positions for those attorneys not admitted to equity participation. Voting and policymaking are typically restricted to senior partners. This model does not distinguish among lawyers according to specialty area or individual contribution.

This structure provides a testing ground for potential full partners. Four to six years as an associate is a common probationary period before the junior-partner decision, with another four to six years before the move to full partnership. Because the firm has two chances to decide about each candidate, "there can be a tendency to admit a marginal candidate to junior partnership, which causes bitterness if that candidate is later denied senior partnership" (Heintz and Markham-Bugbee 1986: 29). There is still an up-or-out decision, so some good lawyers, in whom the firm has invested training costs, are dismissed.

Model II: Equity and Nonequity Partners. This model makes a formal distinction between those partners who perform "broad entrepreneurial, business-development, or management roles and those who are the 'average' client handlers" (34). Thus, there are two tiers of partners. Voting and policymaking are limited to equity partners. The alternative of a nonequity partner role allows a firm to recognize and retain various levels of contribution by its partners without diluting equity ownership. This structure "reserves equity for those partners without whom there would be no firm" (35).

A key difference between Model I and Model II is that unlike the junior-partner category, the nonequity-partner category may be permanent. The promotion pattern is similar to Model I: four to six years to the nonequity tier, but then only another two to four years before consideration for equity partnership. As with Model I, an associate who is performing satisfactorily may be promoted to nonequity partner "just to avoid the difficult decision of termination" (37).

Model III: Equity Partners and Career Associates. This model may be appropriate where the firm wishes to retain valued attorneys who perform a narrow function that may not warrant partnership status. The titles of *career associate, senior associate,* and *senior attorney* are typically reserved for these technical

specialists, who are often in low-visibility areas of the practice. This structure provides long-term employment to valued lawyers without giving them equity and without increasing their income beyond their level of contribution. On the downside, Model III can create a "second class," in the minds of some.

Model IV: Managing Partners and Partners. This structure is based on the philosophy that only a small number of partners should be owners of the firm. After a period of six to eight years, associates are promoted to nonequity partner or encouraged to leave the firm. Nonequity partners can either remain there or may be promoted to managing partner after another three to five years. Managing partners are highly compensated and have high-level responsibilities for making business decisions, generating new business, and contributing capital. To be suitable for the managing-partner level requires outstanding contributions in terms of building one's own practice. Full equity is offered for managing partners.

A key benefit of this model is that management of the firm is tightly controlled by those contributing the most to its financial success. A drawback is that the firm is highly dependent on a few partners, and the loss of one could have a major impact. In addition, decisions about who remains at the nonequity level and who moves up are likely to be controversial.

Model V: Equity Partners With Differentiated Compensation. This structure allows lawyers performing well in "low-leveraged" functions to gain partnership positions, but at a lower level of compensation than "high-leverage" partners (i.e., those with a high degree of work management, considerable involvement in new-business development, and major-client handling). Unlike the two-tier structures, in Model V these low-leverage partners have voting rights, hold equity, and contribute capital. The underlying philosophy is that flexible compensation sufficiently recognizes desired roles and functions in the firm. This method provides a form of tenure to qualified candidates, but keeps income levels consistent with contribution. A low-leverage partner might be, for example, a tax specialist in service largely to the clients of other partners.

Benefits of Model V include no separate classes (there are not two formal levels of partners); income levels of the highest performers can continue to increase; the firm may reward contribution without changing structure; and there are more opportunities for associates to become partners than in a traditional up-or-out structure. The model's drawbacks are that it requires specific performance criteria on which to base compensation (which can be seen as divisive), measuring performance demands a great deal of administrative effort, and maintaining one-vote-per-partner dilutes the governing ability as partners are added.

legislator with a part-time practice; (4) an attorney who opts to work primarily at home, often because of family responsibilities; or (5) two attorneys (e.g., husband and wife) who share one full-time job (Wren and Glascock 1991: 27). Lateral hires from other firms may also hold the title. (Also see the box "**Free Agent Attorneys**" opposite.)

So how do such firms make their multiple career track systems work? In law firms with tiered employment opportunities, salaries vary as do expectations of hours worked and, in many cases, activities performed. At Altman & Weil, a suburban Philadelphia-based firm, salaried nonequity partners are paid $60,000 to $90,000 and work 50 to 60 hours per week, compared with full partners, who are paid in the low six figures and work 60 to 80 hours. At Gaston Snow & Ely Bartlett, salaried partners have no ownership, are paid $135,000 to $140,000, and bill 1,800 to 1,900 hours annually, compared with full partners, who average $275,000 and bill more than 2,200 hours. At Chicago's Winston & Strawn there are three levels: senior attorneys paid $100,000 to $120,000 and billing 1,800 to 2,000 hours annually; salaried nonequity partners averaging $144,000 and billing 2,000 hours; and full partners, averaging $280,000 and billing more than 2,200 hours (Saltzman 1990).

Accounting firms. Big Six accounting firms also are redrawing the standard career track — *staff auditor* or *consultant, manager, senior manager,* and finally *partner* — so that partnership is no longer the only goal (Saltzman 1990). An accountant more disposed to advise clients about the arcane provisions of the tax code than to court new clients can now aspire to the position of *director* or *nonequity partner,* neither of which entails owning shares in the firm (Saltzman 1990). The trade-off is approximately $100,000 in annual compensation. The flexibility allows people to pursue preferred assignments and to better control work hours and travel demands. Many such directors eagerly and voluntarily trade the less lucrative status for the less onerous routine. The goal is to create more choices. In fact, "recognizing early that partnership is out of the question may lead [an accountant] to a firm where that level of success is reachable or to work that [she or he] finds more rewarding" (Saltzman 1990: 70).

Problems Associated With Two-Tiered Systems, and Possible Antidotes

As with any personnel policy, a two-tier system of employment presents problems, some inconsequential and others that have been remedied over a period of adjustment.

Free Agent Attorneys

With an eye to reducing fixed payroll costs and at the same time increasing flexibility, many corporations and other enterprises have shifted away from maintaining large, permanent staffs in favor of hiring temporary employees. In 1996, nearly six million workers held temporary positions, a 500% increase since 1982 (Turano and Dolido 1996). However, that shift is affecting not just support staff and employees in entry-level jobs. Highly educated professionals are finding fewer career-track openings available too, while opportunities for shorter term, contract work are increasing.

Much like higher education's trend toward hiring adjunct faculty members to teach individual courses, the legal profession in recent years has reduced its numbers of permanent, senior-level and partnership-track members in favor of project-based or freelance attorneys. These so-called "contract" attorneys typically are employed to handle a specific aspect of a large case that suits their particular legal experience (Barrett 1997; Dorell 1996). For example, they might be hired for cases that involve large numbers of depositions, large transactional cases or trust matters, or other document-intensive work. Because of the need to preserve confidentiality and avoid conflicts of interest, contract attorneys generally are not involved in litigation, since they might work for multiple firms or corporations within a brief time.

Contract attorneys include many lawyers who have chosen to forego a traditional law firm partnership, as well as large numbers of young attorneys who have taken the option involuntarily. The legal profession also has broken tradition in recent years by hiring "free agent" partners, whose high-profile reputations bring new clients and a certain cache to a firm (Klein 1997: A24). However, these free agents are most often hired as nonequity partners, leaving their status more fluid. Legal consultant Richard Reed comments: "Firms often bring in a lateral hire as a nonequity partner for a period of time. They are offered salaries with some strings attached to make sure they can bring in the business" (interview, January 13, 1998).

This rising tide of freelancers parallels the increases seen in the use of adjunct faculty in academe. In law firms and in corporate law departments, the use of temporary staff:

- allows the enterprise to adjust more readily to client needs;
- frees senior attorneys to concentrate on more sophisticated, higher-level material;
- permits hiring as needed and termination at will and at no cost, without the burdens of recruiting, counseling, evaluation, or awkward farewells; and
- nearly eliminates the need for training, because contract employees are hired to handle discrete tasks for which they already have experience.

For the freelancer, on the other hand, the situation can be less beneficial. Salaries for contract attorneys are generally considerably lower than those for permanent associates in law firms. An associate's hours might be billed at $150 per hour, for example, and a contract attorney's at $50, of which the contractor receives even less.

While some attorneys deliberately opt away from the partnership track, for family or other reasons, others find themselves taking contract work because the threshold to partnership is far narrower than it once was. Nationwide, the number of equity partners in law firms declined between 1986 and 1996; to what degree varied among firms. *The National Law Journal* reported, for example, that "at Chicago's Sidley and Austin, the sixth-biggest firm in the country, 15 of the 91 associates hired in 1986, or 16.5%, went on to make partner at the firm. By contrast, none of the 31 associates hired that same year by New York's Cadwalader, Wickersham & Taft reached the promised land. And only 3 of 47, or 6.4%, made partner at New York's Sullivan & Cromwell" (Klein 1997: A24). The managing partner of a large Los Angeles firm commented, "It used to be that if you did a creditable job and did what you were asked, you made partner. Now the standards are much more strict" (A24).

— Holly Madsen

Status differential. When the two-tiered approach was first introduced, the primary concern was the internal and external perception of status differential; namely, a sense that one tier was privileged and the other second class. Law firm partners worried about the morale of nonequity colleagues, a concern that was largely unfounded: First, most firms treat nonequity or income partners as valuable members of the firm. "Morale among staff attorneys is quite good. ... [T]hey are treated as very important parts of the team ... and are included in ... most functions" (Graham 1983: 3). "With rare exceptions, income partners should be treated identically to capital partners" (Hildebrandt and Kaufman 1990: 19). Second, when new attorneys are hired with no promises of partnership, there are no dashed expectations later (Freeman 1987: 104). "Many associates fresh from law school have written off partnership even before they arrive at law firms" (Klein 1997: A25) and see a nonequity position as a "welcome place to land — secure, without the billing pressure and liability that come with being a full partner" (A24). One can hear the echoes of newly minted Ph.D.'s in nontenure-track positions.

DESPITE INITIAL CONCERNS ABOUT THE IMPACT OF A TWO-TIERED STRUCTURE ON RECRUITMENT, MANY LAW FIRMS HAVE FOUND THAT THE NEW SYSTEM HAS ACTUALLY ENHANCED IT.

Third, in addition to treating income partners similarly to capital partners *inside* the firm, many firms publicly present income partners simply as partners, without any distinction in rank:

> *There is psychological value in being known to the outside world as a partner and nothing less. Income partners have achieved a certain stature and have already made a significant contribution to the firm. Associates should view income partnership as a sought-after status and a career milestone, not a dumping ground. A firm should hold the position in high esteem and use it to reward those who have achieved success.* (Krocheski and Santangelo 1993: 36)

Recruiting. Despite initial concerns about the impact of a two-tiered structure on recruitment, many law firms have found that the new system has actually enhanced it. A two-tiered structure has proven popular with young lawyers, partially for the very reasons that the up-or-out system was so unattractive. Most associates appreciate the economic reasons for a two-tiered structure; want to be affiliated with a financially sound firm (Krocheski and Santangelo 1993: 36); and realize that alternative pathways offer the opportunity to *choose* to concentrate on the law rather than to undertake the full range of responsibilities expected of full partners. In most firms, an equity partner must "excel not only as an attorney, accountant, or consultant — and salesperson — but also as a manager and business leader" (Saltzman 1990: 70), skills that not everyone may have or wish to

exercise. "Some lawyers simply cannot or do not want to make the commitment to meet all of the requirements essential for equity status" (Krocheski and Santangelo 1993: 36). Noted one young attorney, "I can lead a balanced life and practice law in a way that suits me," whereas as a full partner he would have to log some 2,300 billable hours each year. As an income partner, by contrast, he maintains a more manageable 1,800 to 1,900 hours annually, which leaves him time to chair the firm's pro bono committee, play a leadership role in a variety of organizations, and spend more time with his family (Saltzman 1990: 68).

Still other attorneys are content to stay with firms at a nonequity level because "partnership today ain't what it's cracked up to be" (Klein 1997: A25). Many nonequity partners are glad not to have the responsibility or the liability of full partnership.

> *Indeed, in an era of shareholder suits and intense rainmaking pressure, practitioners and observers say that perhaps partnership with a big firm isn't such a desirable end in the first place. "There was a time ... when reaching partnership was tantamount to attaining tenure as a professor. You had it made. You couldn't be fired." But the pressure and burden of ownership have never been greater.* (Klein 1997: A25)

Many young attorneys today do not expect to stay with one firm for more than a few years, and they tend to see the variety of career paths as attractive alternatives or as lifestyle choices (Hildebrandt and Kaufman 1990).

Rigor. A third concern about a tiered system was that a rigorous and stringent up-or-out policy forced firms to be extremely selective. Some partners worried that in a multitiered system marginal associates might be advanced to the next level rather than terminated. A nonequity or income partnership might become a "dumping ground" for associates who should have been dismissed. Firms that treat all partners alike, regardless of ownership stake, and take seriously the roles of all attorneys in the firm have avoided this problem. The key has been to clearly delineate the performance requirements for each tier and to uphold high standards across the board.

Productivity. A fourth problem associated with fewer attorneys as partners has proven more difficult to overcome. Many associates in law firms who cannot move up are choosing to work only the required number of hours and no more (Klein 1997). To keep associates from slowing down after they bill the requisite 1,900 hours annually, Los Angeles-based Lewis, D'Amato, Brisbois & Bisgaard began giving its associates a cash bonus ($35 to $50) for every extra hour worked, but few firms have such a bonus system.

Inside the Academy

Just as law firms have had to change internal structures in response to major upheavals in their environment, so too has higher education. Full-time, nontenure-track appointments are equivalent to the second tier in a law firm. These academic appointments allow colleges and universities greater fiscal and program flexibility, because faculty typically are hired on three- to five-year appointments. Gappa (1996) highlighted four models:

- *Teaching appointments* are those hired in lieu of tenure-track or part-time faculty and are used in a variety of disciplines, but especially in the arts. Typically, their primary responsibility is teaching. Such appointments allow institutions to fill key curricular gaps by hiring faculty on a full-time basis but not on a tenure-track line, as temporary but full-time replacements, and to maintain flexibility.
- *Professors of practice* are commonly either clinical faculty members hired to supervise students in practicum settings (e.g., nurses who supervise students in hospitals) or experienced professionals hired to teach courses because of their unique knowledge of practice in the field (e.g., a retired senior partner from an accounting firm or a former CEO teaching in a business program).
- *Research professors* are employed to conduct research and supervise research facilities, often as principal investigators, and whose continuing appointment is contingent on their obtaining outside funding.
- *Lecturers* (sometimes referred to as *distinguished senior faculty*) are hired in long-term, nontenurable positions to teach, advise students, or conduct research. Some lecturers are involved with campus student organizations in addition to teaching and publishing.[4]

Many alternative employment arrangements have emerged in medical schools, because of the revolution in health care and the intense competition from HMOs. Nontenurable and tenurable appointments in medical schools usually require different activities of faculty members. At the Harvard University Medical School, for example, *laboratory investigators* perform basic research, *clinical investigators* conduct clinical research, *teacher clinicians* make scholarly contributions in medical curricula

[4] For a full discussion of each type of nontenurable appointment as well as an examination of themes and issues surrounding the use of such appointments, see Gappa 1996.

or pedagogy, and *clinical scholars* make scholarly contributions in clinical care and clinical teaching (Gappa 1996).

Northeastern University offers two nontenurable employment options: *cooperative education coordinator* and *clinical or academic specialist.* Cooperative education coordinators have a primary responsibility to teach. They are part of the general university faculty and are included in governance as voting members. These faculty members "enjoy the same academic freedoms and associated responsibilities as full-time tenured and probationary faculty when performing teaching-related duties" (Northeastern University 1992a: 2-3).

The Bouve College of Pharmacy and Health Sciences at Northeastern employs nontenure-track faculty with primary responsibility for clinical teaching, clinical activity supervision, and clinical course supervision and coordination. These employment options recognize that "the responsibilities of tenure-track faculty, including teaching, research, and service ... do not allow time for clinical activities" (Northeastern University 1992b: 2). Thus, Northeastern proposed a title of *clinical specialist* — a new faculty category that would

> *accord these individuals greater rights, assist in ensuring continuing accreditation of our clinical programs, provide more representative governance, improve the recruitment and retention of health college faculty, and allow us to keep pace with other institutions [that] have adopted new faculty categories for clinical professions in programs like ours.* (2)

National University, in San Diego, has a four-tiered employment model that, according to president Jerry Lee, serves the institution "exceptionally well" by providing

> *a framework within which full- and part-time faculty can work collaboratively; wherein our part-time faculty have the opportunity to be fully engaged in the University's academic life instead of being relegated to the alienated status common with other institutions that rely heavily on adjunct faculty; and in which our dispersed academic centers can include dedicated faculty with sufficient on-campus presence as to provide knowledgeable stability that is often lacking at the "satellite" campuses often designated for "off-campus" adults.* (personal communication, July 6, 1995)

National's faculty tiers include *full-time faculty,* who engage in teaching, research, and service activities. There also are *associate faculty,* who are employed on one- to three-year contracts, teach part-time (six to eight courses a year), advise students, engage in teaching-relevant scholarship, and participate in

NATIONAL UNIVERSITY, IN SAN DIEGO, HAS A FOUR-TIERED EMPLOYMENT MODEL THAT, ACCORDING TO PRESIDENT JERRY LEE, SERVES THE INSTITUTION "EXCEPTIONALLY WELL."

departmental activities. Some associate faculty are recently retired from full-time university or professional life, and others have significant but part-time sources of additional income. Third, there are *core adjunct faculty,* who are hired on annual contracts to teach six to nine courses a year and have full- or part-time commitments elsewhere. Then National employs *adjunct faculty,* hired on a month-to-month basis to teach individual courses.[5]

> *National has found that this model fits well with our mission and structure; provides avenues of involvement for faculty in all tiers who seek closer ties with the University; affords the flexibility needed for a dynamic, teaching institution like ours; protects the academic freedom of its faculty; and simultaneously enables the University to keep its faculty expenses from becoming exorbitant.* (Lee)

In addition to offering alternatives to the tenure tracks, many institutions are restructuring faculty roles and rewards to facilitate and enhance diverse career paths.[6] As with the trade-offs between equity and nonequity partnerships in law firms, choices are made about the scope and intensity of academic work. A 1994 survey by the Carnegie Foundation for the Advancement of Teaching revealed that most institutions have completed a reexamination of faculty roles and rewards, have such a review under way, or plan to initiate one soon (Glassick, Huber, and Maeroff 1997). Only 18% of all institutions surveyed *do not* plan to initiate such a review.

The College of Arts and Sciences at Georgia State University, for example, has developed a workload policy, a post-tenure review system, and a merit equity salary initiative (Abdelal et al. 1997). Faculty at Georgia State are reviewed and evaluated in terms of teaching, research, and service. Faculty members who contribute significantly in all three areas receive a salary increase, as necessary, to ensure that they are among the university's highest-paid faculty. If they excel in only two areas, they and their supervisor decide together whether the faculty member can and wants to strengthen that third area or prefers to concentrate on just two areas, with salary corresponding to that contribution. Those who want to broaden their efforts, and in whom the university has confidence, write a work plan and receive support (in the form of graduate research assistance, a summer stipend, or a quarter without teaching duties). Their department chair carefully monitors progress against the plan.

> *Where faculty had not published in many years or simply had no enthusiasm for doing so, it was often possible to establish a mutually agreeable arrangement whereby the person would teach more*

[5] A fifth tier — *professor emeritus* — was added in 1996-97.

[6] For a detailed description of redesigning faculty roles and rewards, see Glassick, Huber, and Maeroff 1997, as well as resources from the AAHE Forum on Faculty Roles & Rewards.

> *and perhaps make a more substantial service contribution. Some faculty ... have been very amenable to the idea of their teaching more in exchange for relief from the heavy publication expectations of their colleagues.* (Abdelal 1997:67)

When some faculty teach more than others, the most productive researchers can allocate more time to that scholarship. "Where some teach more, others may teach less without loss of course offerings for the students or credit hours for the institution." Georgia State University was "surprised at how willingly faculty enter into cooperative arrangements that ... realign their talents and interests with departmental expectations" (67).

The university realizes mutually beneficial employment terms and conditions through adjustments in duties and faculty work categories. For example, faculty members particularly adept at one kind of teaching (e.g., small graduate seminar) but weak in another (e.g., large undergraduate lecture course) may be assigned courses suitable to their talents and be linked to a mentor and faculty-development opportunities to overcome their instructional weaknesses. Similarly, service assignments may be adjusted with the department chair to match faculty skills and objectives.

At least one academic institution has abandoned the up-or-out tenure track in favor of contract appointments that are "tenure-leading." The University of Nebraska Medical Center instituted "health professions appointments" for all new faculty members:

> *The [health professions appointment] is ... awardable for up to five years and renewable indefinitely. The appointment is tenure-leading in that any individual on an HPA may achieve tenure, but it is not necessary for him/her to do so to continue his/her appointment. There is no obligation on the part of the University to renew a HPA, but such an appointment ... may be renewed indefinitely. If a faculty member wishes to achieve tenure, he/she may request tenure review through the normal tenure review process. If tenure is not awarded, the individual is governed by the conditions of the existing HPA contract.* (personal correspondence, William O. Berndt, vice chancellor for academic affairs, November 28, 1995)

Interestingly, these faculty members may apply for tenure at any time, but they are not required to do so. There is no penalty for a failed tenure application; the appointment simply reverts to the existing contract and the faculty member may reapply for tenure at a later date (Wigton and Waldman 1993). In place since 1988, the process has not altered the number of faculty achieving tenure in the basic sciences. The number of clinical faculty seeking tenure, however, has "fallen dramatically, as have the awards of tenure" (Berndt).

At Johns Hopkins University, different schools have tailored different faculty career paths to meet that unit's mission and circumstances; see the box "**Johns Hopkins University: One Institution, Eight Schools, and Multiple Employment Tracks**" on page 22.

Johns Hopkins University:
One Institution, Eight Schools, and Multiple Employment Tracks

The Krieger School of Arts & Sciences and the Whiting School of Engineering primarily have tenured and tenure-track faculty positions. Both have up-or-out systems, in which promotion to associate professor occurs at year six and promotion to full professor occurs at year ten. "Tenure is awarded exclusively at the full professor level" (De Pasquale, Hendricks, and Keiger 1997: 18). In the Krieger School, its 111 research scientists are on a nonfaculty track. The nontenure research track in the Whiting School comprises ranks from research scholar to research professor.

Faculty in the School of Medicine are employed on a series of contracts, ranging in length from one year (for instructors, renewable twice) to one-to-five years (for assistant professors). The maximum time at assistant professor rank is ten years, unless an exception is granted. Contracts for associate professors are for a minimum of three years, with the exception of terminal two-year contracts (for those not to be promoted) or a one-year contract at the time of the nine-year review. With a few past exceptions for associate professors, only full professors are granted contracts to retirement, the equivalent of tenure.

The Nitze School of Advanced International Studies hires faculty at two levels — senior faculty with tenure or junior faculty on contracts not to exceed six years. This policy is part of a concerted effort to constantly "circulate younger people who are closer to the newer developments in the field" and to keep the school from becoming "constipated" (24).

In a "model system" for a profession that needs "venues for practice as well as scholarship and research," the School of Nursing offers two tracks. The research/education track offers tenure at the full professor level and requires promotion according to a tenure clock. The practice/education track, primarily for clinical faculty, does not offer tenure and has no time cap. Practice faculty may move to the research track by shifting their focus. Currently, only three faculty members have tenure. "Tenure means you have the right to a long-standing affiliation with the institution, but it doesn't guarantee full salary, or any salary at all, without revenue-generating activity," reported dean Sue Donaldson (26).

There are tenure and nontenure tracks in the School of Public Health. Faculty must demonstrate outstanding scholarship and generate substantial funding to earn tenure. An exceptional researcher with a "weaker funding history can be promoted to professor without tenure" (28), although this is rare. The nontenure track, "unofficially in place for many years ... and officially implemented in 1995 to allow hiring on a project-by-project basis and avoid the long-term financial obligations of tenure" (28), comprises the ranks of senior research associate through senior scientist. Many nontenure-track faculty have open-ended contracts and have duties similar to those of their tenure-track colleagues. Since 1990, the tenure-track faculty has decreased by 8% and the nontenure-track faculty has increased by 74%.

The Peabody Institute (a school of music) has "no tenure, no rank, no long-term faculty contracts, and comparatively little discontent" (31). Faculty members are employed on one-year renewable contracts in an "egalitarian" system. The School of Continuing Studies has very few full-time faculty members and does not offer tenure. The predominantly part-time faculty teaches on a contract basis.

Summary and Questions for Discussion

Nearly half of all large law firms in the United States have eliminated up-or-out policies and offer their lawyers a variety of career tracks. Likewise, many academic institutions have created multiple faculty employment tracks.

- Do multiple career paths make sense for individuals and institutions? What are their drawbacks and benefits?
- Should institutions adjust the compensation of faculty members as a function of the breadth of assignment, level of expectation, and scope of responsibility?
- Is the standard one-size-fits-all up-or-out provision the optimal way to hire and socialize junior faculty members? If multiple tracks are available, how can institutions fully integrate all faculty members into the campus community to minimize class distinctions?
- What are the implications of multiple employment tracks for shared governance? For quality?

(2)
Workload and Productivity

Outside the Academy

Medicine. Especially in the health care industry, workload and productivity issues recently have assumed critical importance, as hospitals and private practices seek to reduce costs and increase efficiency. (See the box "**Coast Dental**" on page 24.) In New York, the Health and Hospitals Corporation now will monitor carefully the productivity of Columbia University's College of Physicians and Surgeons as a medical service provider. Under a new agreement, Columbia "agreed to pay fines if it fails to meet performance standards for improving levels of child immunizations, mammographies, and other preventive medical measures" (Fein 1997: A1). There will be "aggressive monitoring" of Columbia's physicians because the "era of limitless resources with no accountability or productivity measures has ended" (A1). As part of that contract:

> *Columbia could be fined if its doctors failed to conduct Pap tests on a certain percentage of its female patients. Alternatively, if doctors saw more patients than the number set in the contract, Columbia could be eligible for higher reimbursement. [In the past,] a doctor might be paid $140,000 a year whether he saw 1,000 patients or 5,000. An anesthesiologist could earn $200,000 a year doing 1 procedure a day or 15.* (B5)

Coast Dental

This Tampa-based dental practice management company has an impressive record of sales and profitability. In 1992, Coast had one office. By 1996, the company had twenty-nine offices, in which forty-two dentists served 237,500 patients. Its net revenues increased from $1.2 million to $8.1 million, and its gross profits went from $398,000 to $2.7 million annually.

What has accounted for the company's growth? According to Prudential Securities, Inc. (*Market Advisory*, 3/11/97), "Coast has incentives in place to augment staff incomes while enhancing dental center productivity. An increase in daily production beyond certain benchmarks results in correspondingly higher cash and stock-option bonuses. These compensation extras are computed daily with up-to-the-minute data, which provide an ongoing 'dollar carrot' for Coast's dentists, whose average earnings are well above those for the profession in general. Affiliated dentists can also see how well or poorly other Coast dentists are doing."

Law firms. According to Anthony Davis,[7] a partner at the New York City firm of Fox & Horan, hourly billing was uncommon before 1970. Computer technology and pressure from consumers changed the entire billing process, as well as the culture of law firms.

> *Prior to the 1970s, fees were typically negotiated when the work was completed. If there was a disagreement about the bill, it was discussed and an appropriate fee was negotiated. Then, during the 1970s came the era of hourly billing. However, hourly billing promoted inefficiency. There's a conflict of interests ... do more ... bill more. In other words, "I work for you. The more work I do, the more money I make." This led to the growth of very large law firms that can hire more attorneys and bill more hours. Now, however, clients are saying, "We're not buying time anymore, we'll budget and get bids. We're buying services now, and we'll hold you [law firms] to the same standards as the rest of the commercialized world."* (interview, January 8, 1997)

The law firm culture has changed substantially in another way, as well. "There was a strong tradition, an ethos. ... [A formal partnership process] wasn't written down. You came up through the ranks, became a partner, and you were in. There were very few breakups, and nobody was kicked out. Partners tightened their belts in a bad year ... [they] didn't fire lawyers" (Davis).

Indeed, until about twenty years ago, an attorney made partner, was a partner for life, and compensation was primarily determined by the number of years of service (Freeman 1987). "While many firms still embrace this traditional attitude, some are paying more attention to partner productivity" (53). Law firms had the "luxury of ignoring their individual partners' productivity. The culture and compensation systems ... condoned underproductivity by rewarding seniority and stewardship over billable hours, business development, and management. The concepts of marketing, lateral hiring, and revamped billing systems are foreign, perhaps even anathema, to the profession's senior statesmen" (Chanen 1997: 68). Despite the anxieties created as a result, the law firm culture is changing, "giving way to the corporate mentality of productivity" (68).

Now firms calibrate the productivity of individual attorneys against (1) current production quotas at the firm, (2) the production and profitability of others in the firm, and/or (3) the production of the individual attorney in previous years, most often measured in billable hours and dollars generated. Admittedly, "intangible contributions, being more difficult to quantify, can be overlooked or undervalued" (Reed 1990: 16). The law firm management consulting group Altman Weil Pensa advises partners to look at more than dollars and hours billed; productivity should be

[7] Davis also teaches as an adjunct professor of law at Brooklyn Law School and as an assistant professor at New York Law School, where he formerly held the position of assistant dean.

measured in terms of ownership. "Qualities such as client service, practice development, and management contributions must be considered [to be] as valuable as billable hours and business development" (Chanen 1997: 70). There is a real need to be concerned with the long-term viability of the firm, rather than just short-term economics. Firms that push partners to run harder and faster are in danger of creating internally competitive cultures that cannot sustain long-term growth (Chanen 1997).

According to Pensa International consultant Richard Reed, "Increasingly, law firms will need to weigh the advantages of focusing on income statement thinking (billable time) against balance sheet thinking (where partners and associates are more mindful of the overall quality of service and the long-term needs of the firm)"(interview, December 9, 1997, by Holly Madsen). A law firm that compensates partners only on a percentage of revenues generated provides no incentive for them to participate in the training and development of the firm's associates.

ANOTHER IDEA, DESCRIBED BY REED AS "WILD," WOULD ALLOW LAWYERS TO ACCUMULATE PRODUCTIVITY "CREDITS" TO BE DRAWN ON LATER TO MEET FUTURE PRODUCTIVITY REQUIREMENTS.

Evaluating an attorney's contribution to the firm should take the long view, and recognize that many partners may not wish to work at the same pace throughout their careers (Chanen 1997; Reed 1990; Rose 1994). Some viable options include providing partners with the opportunity to slow down gracefully and gradually, or to change status and/or responsibility (Reed 1990).

As proposed by Reed (1990), a slow-down approach would work as follows: Lawyers with fewer than eleven years as partner would have to deliver a prescribed number of chargeable hours per year. After eleven years, the minimum hours required would drop by fifty hours. At age 55 and again at age 60, that minimum would be reduced by another fifty hours. Other firms have a phaseout requirement for partners as part of their retirement planning (Freeman 1987). While plans vary, a typical phaseout averages three to five years during which time the partner's billable hours and compensation gradually decline, and clients are transferred to other members of the firm.

Another idea, described by Reed (1990) as "wild," would allow lawyers to accumulate productivity "credits" to be drawn on later to meet future productivity requirements. For example, a firm requiring 1,800 billable hours per year would award a partner who worked 1,900 hours 100

productivity credits, which he or she could apply to the billable-hour requirement in future years without any loss of income. The firm, in effect, creates a productivity "bank" where its lawyers over the course of their employment make deposits in some years and withdrawals in others.

Change in status or responsibility options for partners who have become unproductive include these: to provide the partner with full compensation but for different duties (e.g., training, supervising, marketing, participating in community or professional activities); to reduce the partner's duties, with or without a corresponding reduction in compensation; to have the partner become *of counsel,* without a partnership interest in the firm; and to require that the partner convert from full partner to nonequity partner and liquidate his or her capital account (Reed 1990).

Inside the Academy

Data gathered in the 1993 National Survey of Postsecondary Faculty (U.S. Department of Education 1997) revealed that faculty in four-year institutions worked an average of fifty-five hours per week in 1992, with the distribution of those hours among teaching, research, administration, service, consulting, and other activities varying by institutional type, mission, discipline, and faculty rank.[8] These factors, in turn, were closely tied to faculty rewards. Faculty tended to devote the most time to the activities most rewarded by the academic profession and by their institution. Of all faculty responding, those at research institutions spent the least time on instruction and the most on research; conversely, those at liberal arts institutions spent the most time on teaching and the least on research. In four-year institutions, faculty spent more than half of their time on teaching-related activities, on average. The time spent teaching by individual faculty members was inversely related to their rank: professors spent less than associate professors, who typically spent less than assistant professors (Fairweather 1996).

Fairweather also found that scholarly productivity was very highly valued in terms of pay for faculty in four-year institutions. "Regardless of institutional type or mission and irrespective of program area, faculty who spend more time on research and who publish the most are paid more than their teaching-oriented colleagues"(67). He writes that the findings "strongly suggest" that

> *Messages conveyed to faculty by administrators, through compensation, about the importance of research productivity [are] remarkably consistent across the institutional type and discipline. This*

[8] For an excellent discussion and analysis of faculty workload and productivity, see Fairweather 1996.

> *trend is not merely the result of professional norms, in which faculty norms are created in graduate school and enforced by faculty peers through promotion and tenure. Instead, academic administrators reinforce research behavior through salary. The results indicate an inconsistency between the stated values of department chairs and patterns of [faculty] pay.* (69)

Teaching productivity, typically measured by student-contact hours generated per semester, was virtually identical across research universities, doctoral-granting universities, and comprehensive institutions (Fairweather 1996). On average, faculty in four-year institutions spent 9.4 hours in class each week in 1987-88 and generated 322 student-contact hours per semester. Research productivity, typically measured by number of publications over the course of a career, varied substantially by type of four-year institution. Faculty in research universities, engineering, and medical schools publish the most, and faculty at liberal arts institutions the least. Faculty in more prestigious institutions generated more publications and led more research projects than faculty in non-doctoral-granting institutions (Fairweather 1996).

Adjusting faculty work. From 1969 to 1989, many faculty members decreased their instructional workloads to increase their research output (Massy and Zemsky 1992). But when constituents complained, legislators called on public institutions to address issues of faculty productivity (Giles-Gee and Miyares 1997).[9] By 1994, many states[10] had conducted comprehensive studies of faculty teaching loads. Some states, including Arkansas, Colorado, Illinois, Indiana, and Texas, have considered amending budget procedures to encourage the attainment of teaching goals; Ohio has required through legislation a statewide 10% increase in undergraduate teaching (Giles-Gee and Miyares 1997).

Concerned that too much faculty time was going into research at the expense of undergraduate teaching, the Maryland General Assembly in 1994 withheld $21 million from the degree-granting institutions of the University of Maryland System, its release contingent on the Assembly receiving a report on faculty workload. The University of Maryland Board of Regents approved a policy designed to "promote optimal performance by UMS faculty and to assure accountability":

> *The policy indicated the centrality of instruction in three ways: (1) defining a percentage of teaching effort required for each "core" (tenured and tenure-track) faculty member that exceeded*

[9] Giles-Gee and Miyares 1997 offers an excellent overview of what is happening nationwide to increase faculty productivity.

[10] California, Idaho, Maine, Minnesota, Nebraska, Nevada, Oregon, Utah, Virginia, and Wyoming (Giles-Gee and Miyares 1997).

> *the effort required for research/scholarship or service activities; (2) requiring that all tenured and tenure-track faculty be involved in the instructional program; and (3) requiring that senior faculty participate in undergraduate instruction.* (Giles-Gee and Miyares 1997: 79)

In addition to designing and implementing faculty workload and productivity policies, academic institutions are experimenting with reductions in compensation, redistribution of duties, and early-retirement incentive packages for faculty members. (For example, see the discussion of Georgia State University in the previous section.)

The Dartmouth Medical School adopted a policy of productivity credits, similar to Reed's suggestion for law firms, that allows faculty members to participate in a Program for Extended Guarantee of Compensation. This policy was designed to provide a measure of security for a "growing group" of nontenured senior faculty. To be fully compensated, participating faculty are expected to derive a minimum of 60% of their compensation from external sources, up to 15% through institutional service, and 25% from teaching and other departmental duties. Upon appointment to associate professor and enrollment in the plan, each faculty member is provided with an Individual Compensation Reserve Account (ICRA) containing 250 basis points.[11]

> *A shortfall of 1% of annual compensation results in a subtraction of one basis point. The faculty member's appointment ends if the number of basis points in his/her ICRA reaches zero. Basis points can be added to the ICRA to a maximum of 300. Points are added if a faculty member is deriving more than 60% of compensation from external sources and merits compensation for institutional service and teaching. Basis points can be placed in departmental accounts ... [that may be] converted to a dollar reserve at the time they are added ... [and may be used] in support of appropriate research or academic activities.*

IMPORTANTLY, THIS POLICY ALLOWS FACULTY MEMBERS WHO EXPERIENCE SHORTFALLS IN EXTERNALLY FUNDED RESEARCH TO DRAW DOWN THEIR ACCOUNT RESERVES AND THUS CONTINUE TO RECEIVE FULL COMPENSATION

Importantly, this policy allows faculty members who experience shortfalls in externally funded research to draw down their account reserves and thus continue to receive full compensation. Faculty

[11] One basis point represents 1% of annual compensation. Basis points provide an accounting mechanism for the guarantee program. They are not dollar denominated. They are not "earned" or "spent." They are added to or subtracted from the ICRA in proportion to the actual compensation support derived by the faculty member from teaching, service, and research activities.

members may earn ten points for each year they serve in the role of principal investigator, and five points for each year as director of a training grant;[12] they may share up to ten points with another faculty member if they serve as a coprincipal investigator. Each faculty member may earn five points annually for excellence in teaching.[13]

Retirement incentives. Many academic institutions have instituted early-retirement incentives for faculty members, and many of these incentives include the possibility of reduced workloads toward the end of a career. Overall, 36% of institutions offered buyouts to faculty members in 1994, and 28% of full-time instructional faculty indicated they would seriously consider an early-retirement option if offered (Chronister 1997).

> *Early-retirement options were offered by 38 percent of public institutions, with 39, 30, and 55 percent of two-year, comprehensive, and research/doctoral institutions, respectively, making the plans available. Only 32 percent of independent institutions offered an incentive program — 68 percent of the research/doctoral institutions; 28 percent from all other types of independent colleges.* (117)

Also, 46% of full-time faculty members expressed a broad interest in the opportunity to continue working part-time at their institution after retirement (117).

Virginia Polytechnic Institute & State University offers faculty members a voluntary separation agreement, the Individual Transition Option Plan, with three choices: (1) Qualified faculty members may, at age 55 or older, take a lump-sum payment equal to 100% of annual base salary, with health care premiums paid to age 65. (2) After age 45, faculty members may take a lump-sum payment equal to 100% of annual base salary, with health care premiums paid for one year. (3) Under a "reduction-in-force," faculty members age 45 or older may take a lump-sum payment equal to 150% of annual base salary, with health care premiums paid for two years.

Such faculty members may be rehired to teach on a part-time basis; however, their earnings plus retirement payments must not exceed 100% of their former salary. The university's associate provost for academic administration reported, "This allows a phased retirement that, in general, has been good for both the employee and the departments where utilized. Research-active faculty can also

[12] A faculty member is eligible to receive a maximum of fifteen basis points if he or she serves as both principal investigator and director of a training program.

[13] Faculty members who have fewer than 250 basis points and have obtained 100% percent of their compensation in that fiscal year from external sources alone or from a mixture of internal and external sources have thirty basis points added to their ICRA, to a maximum balance of 250 points.

continue to be paid on grants and act as principal investigators ... with the same earnings limitations" (personal communication, P. Hyer, December 28, 1995).

The University of Washington allows its faculty members to return to work up to 40%-time for a maximum of five years[14] after their retirement. The policy allows the university to discontinue reemployment after retirement "on evidence of diminished capacity and ineffectiveness in teaching" or in the event of program elimination or financial exigency. According to the vice provost, some 85% of the tenured faculty members are reemployed in the first year after retirement, but after three years the number drops to 25% (personal communication, S. Olswang, April 18, 1995).

In spring 1996, the Massachusetts Institute of Technology offered faculty members and other employees age 55 or older and with ten years of MIT benefits-eligible service a voluntary special retirement incentive. The offer included a monthly annuity equal to 10% of base salary, a bridge payment of $500 per month for employees between ages 55 and 62 ineligible for Social Security benefits, and a guaranteed 7.5% annuity purchase rate on the book value of fixed funds. As an additional incentive for tenured faculty members, those between ages 60 and 64 could also receive a one-time transition cash payment equal to 1.5 times their annual salary. Tenured faculty members age 65+ could receive a transition cash payment equal to their annual salary, with the possibility of up to 49%-time reemployment for a maximum of five years.

At Macalester College, eligible[15] senior faculty members may participate in a program in which they are employed half-time while retaining their current title. Under the program, this may continue for four years, or until the end of the academic year in which the faculty member reaches age 70, at which time the faculty member must retire. Participants are paid 50% of their regular salary, receive all of the benefits offered to full-time faculty members,[16] and the college reimburses each tenured faculty member up to $3,000 for financial planning related to retirement (personal communication, Wayne Roberts, provost, December 15, 1995).

The State of Oregon offers its faculty a 600-Hour Program for phased retirement. Since 1981, most eligible faculty at the University of Oregon have signed up, reported John T. Moseley, provost

[14] Partial employment up to 40%-time may be approved on a year-to-year basis beyond the five years, depending on the needs of the department.

[15] Faculty between the ages of 62 and 70 and with fifteen years of service at Macalester are eligible. Faculty with tenured service at a previous institution may count up to five years of that service toward the requirement. Other eligibility provisions apply.

[16] Benefits based on salary are prorated.

and vice president for academic affairs (personal communication, August 22, 1996). Under this plan, faculty members receive a 6% increase to their base salaries for up to three years of full-time employment, followed by up to five years of part-time employment. The part-time employment is limited to 600 hours annually (the equivalent of half-time for one year or full-time for one semester). For a variety of reasons, "faculty usually sign up for five years of [part-time employment] ... but seldom exercise that right for the full five years" (Moseley).

In exchange for agreeing to terminate their employment and surrender their tenure, faculty at the University of Nebraska may participate in the Extended Voluntary Tenure Settlement Program. Participants receive annual payments equal to 100% of their final base salary for three years, paid in equal monthly installments; continued enrollment in the university's basic and optional life and health insurance programs; and normal university contributions toward such coverage for three years.[17]

PHASED RETIREMENT PROGRAMS OFFER FACULTY MEMBERS THE OPPORTUNITY TO TRANSITION GRACEFULLY FROM FULL- TO PART-TIME WORK, YET REMAIN CONNECTED TO THE INSTITUTION

Phased retirement programs offer faculty members the opportunity to transition gracefully from full- to part-time work, yet remain connected to the institution. Such programs enable faculty members to sustain meaningful connections to students, other faculty members, and the campus community, by easing what can otherwise be an abrupt end to what might have been a lifelong commitment.

Observations and Conclusions

According to Massy and Wilger (1995), the following conclusions, as well as some important contradictions, can be seen in the way faculty members view productivity:

1. Faculty view productivity as being synonymous with results. ... They try to maximize output, which means spending more when that is possible.
2. Research and publication are the outputs most frequently maximized.

[17] After three years, faculty members may retain benefits under the same conditions as retirees may.

3. Faculty associate productivity improvement with measurement, ... worry about the adverse effects on quality, ... and protect research time at the expense of increased class size.
4. Faculty economize in their own activities.
5. Faculty tend to "satisfice" their teaching, whereas they maximize their research efforts.
6. Faculty see themselves as "guardians of academic quality." (20)

As a result, "solving the academic productivity problem will require more than exhortations to 'straighten up and fly right.' ... The answer lies in supplying incentives and persuasive arguments to bring the academy's goals into greater congruence with those of its stakeholders" (20).

Massy and Wilger's work closely parallels conclusions about productivity drawn by Birnbaum (1992):

1. Institutions will not attend to matters of productivity that are defined in terms of controlling costs, except under the most unusual circumstances.
2. Productivity structures and processes must be developed and implemented internally.
3. Programs must complement faculty attitudes and values — not conflict with them — if they are to be successful.
4. Productivity is more a state of mind than a structure or process.
5. Sometimes incremental changes can be more successful than comprehensive programs for change. (42-45)

Finally, Heydinger and Simsek (1992) offer some advice about efforts to reshape faculty productivity:

1. Recognize the long-term importance of academic freedom by protecting tenure, but dramatically increase the proportion of annual personal rewards that must be earned each year.
2. Develop clear expectations for individual productivity and hold faculty accountable for meeting the expectations.
3. Retain the current flexibility for individual faculty members to set their own professional agenda.
4. Offer individual incentives and rewards that strongly reinforce *institutional* or *departmental* objectives, thereby strengthening mission differentiation.
5. Integrate into the organization the responsibility for managing *both* revenues and costs.

6. Recognize that the set of rewards available to the institution go far beyond the usual focus on financial compensation (e.g., release time, space, travel, support, equipment).
7. Empower those whom higher education serves so that they can directly assist in executing this agenda.
8. Administrators must "manage to" institutional objectives and value creation, rather than promulgating rules to control faculty behavior. (21-25)

Even considering that these scholars all agree, which is rare enough, actually improving faculty productivity on campuses is no small order. A report of the State Higher Education Executive Officers (Heydinger and Simsek 1992) offers some provocative "lessons" from other professions. It takes note that the productivity of physicians ties directly to their income levels. Similarly, attorneys in private practice measure productivity in terms of personal income. Thus, the observation: "Linking productivity measures directly to a *large* portion of income is a powerful incentive" (18).

Until recently, physicians and lawyers typically passed their costs along to their clients; cost management was virtually nonexistent. Now, however, medical costs are carefully examined by the federal government, insurance companies, consumers, and other third-party payers. In the legal profession, the oversupply of attorneys has slowed increases in legal fees. The message for higher education, says the SHEEO report: "Those who pay the bills will ultimately find ways to intercede to hold down costs" (18).

In the ministry, it is the "customers," not the "providers," who measure productivity and determine compensation. "A minister's productivity is not directly reflected in income level. Instead ... parishioners review the minister's performance and set salary. If a minister is not performing up to the standards of the congregation ... the parishioners can move to have the minister dismissed" (18). The report's conclusion here: "Empowering the customer to have a direct impact on productivity judgments is a powerful tool" (18).

Consider also the business sector. Many firms link pay to individual performance, especially in sales, and many others now link some portion of employee pay to unit or overall company performance. "Directly linking individual reward to organizational performance reinforces the overall institutional goals" (19).

Many recent criticisms of the police — and of higher education, observes SHEEO — are "due in large measure to the lack of consistent expectations" (19). Its conclusion: "Productivity problems

are often rooted in a confusion about the ultimate objective and a lack of clarity about the ultimate customer" (19).

A final lesson is from the airline industry: A pilot's productivity "is on the line like no one else's." Very strict standards exist for pilot behavior, the job requires up-to-date skills and licensing, and pilots must pass frequent examinations. "Yet within this rigidity, work assignments are individualized, ... pilots bid on flights, ... pay is determined by ... seniority, the aircraft flown, ... and the seat occupied in the cockpit" (20). Observation: "There can be significant individual flexibilities built into work assignments while adhering to very strict industry standards for productivity" (20).

Summary and Questions for Discussion

THE DEMAND FOR ACCOUNTABILITY, COST CONTAINMENT, AND PRODUCTIVITY GAINS HAS AFFECTED EVERY PROFESSION FROM MEDICINE TO LAW TO ACADEME.

The demand for accountability, cost containment, and productivity gains has affected every profession from medicine to law to academe. Medical practices, law firms, and higher education institutions have responded with benchmarks, new standards, tighter controls, and a systematic accounting of internal practices.

In light of external and internal pressures for increased productivity, campus communities might discuss the following questions:

- Could productivity credits work in higher education? If so, how? Could faculty members accumulate "points" for overload teaching, funded research, or publications early in their careers, to be drawn upon in later years? Could those points be used to "buy" a sabbatical, for example, or to reduce course load for a semester?
- Are there better ways to measure productivity?
- Should colleges link pay to productivity in any way? For teaching? For research?
- Should senior faculty be expected to be more productive?
- Could the Dartmouth Medical School plan work for other departments and institutions? Could such credits be banked by a department as well as by an individual?
- Should faculty members be allowed to adjust the extent and nature of their workload over the course of an academic career? Does it make sense for faculty members to consider their career in five-year (or other) increments over its course?

- What options best allow faculty to retire gracefully and with dignity? How can faculty members be encouraged to plan for retirement, both economically and psychologically?

(3)
Peer Review of Professionals (Post-Partner and Post-Tenure)

Outside the Academy

With the press for accountability and productivity, various organizations and firms have intensified efforts to institute rigorous and useful performance appraisals, often with a strong emphasis on peer review, throughout the course of a career and not just at the threshold of the senior ranks. Professional autonomy no longer means exemption from evaluation. (See the box "**Even Judges Face Annual Work Reviews**" opposite.)

Think tanks. In most think tanks, supervisors evaluate scholars and researchers annually on the basis of negotiated goals and objectives and research time lines. Depending on these assessments, some professionals are promoted to more senior research positions, while others opt for managerial tracks. However, the continued employment of scholars in think tanks does not hinge on a partner/tenure decision.

For example, according to John Raisian, director of the Hoover Institute at Stanford University, all scholars there, even the most senior, submit semiannual reports to him. These reports cover the scholar's major areas of research, future research plans, recent and forthcoming publications, working papers, honors and awards, public service, major speeches/conferences/seminars, government testimony, media interviews, and other professional activities.

The RAND Corporation reviews its senior staff annually, "just like any other business," according to Priscilla Schlegel, personnel director for RAND in Washington, DC. Salaries and promotions are based on performance. Likewise, at the Brookings Institution, "senior staff are employees with no tenure and no contract" (interview, Z. Durrani, director of personnel, October 4, 1995). Department administrators review senior staff members and assess performance against research plans in a process "very similar to business," with appointments renewed annually contingent upon satisfactory appraisals.

Even Judges Face Annual Work Reviews

After a year of "withering attacks for what some politicians called wrongheaded rulings and lenient treatment of defendants," a plan for annual performance reviews of New York City judges to ensure "accountability and responsibility to the public" was put in place (J. Sullivan, *The New York Times*, January 8, 1997, p. B1). Jonathan Lippman, chief administrative judge of the New York State court system, announced the review procedures: A judge who handles too few cases, makes too many mistakes, or generates too many complaints could face demotion. Might some judges feel "pressured to increase the number of cases they hear each year for fear of being considered too slow?" (B1). Those who do, critics of the plan contend, could make hasty and unwise decisions.

The annual reviews do not apply to elected State Supreme Court justices; however, the approximately 130 "acting judges" who serve on renewable one-year appointments and handle the enormous city court caseload are affected. While most judges are not worried that the new process will threaten judicial independence, there is some concern that a future administration might abuse it by bringing politics to bear in reviews.

On the other hand, administrative judges constantly evaluate these acting judges in the latter's courts, in part to adjust caseload. "In the past, [acting] judges were reviewed informally, and the standards of evaluation were usually unknown," said Lippman. The new system should help open up the process and "assure that the best judges serve on the State Supreme Court," and for Lippman the "best" judges are those who are the "most efficient and productive."

Performance evaluation at the Educational Testing Service includes quarterly feedback, according to personnel director Sandy D'Angelo. Goals and objectives are set each year, although new objectives may be added throughout the year. Performance appraisals are used to determine both salaries and promotion. Though rare, scholars there may be dismissed after oral and written warnings and sometimes after a period of probation.

The Urban Institute is structured "like a university" (interview, Kathleen Savage, personnel director, October 12, 1995), in that there are research centers similar to academic departments. The Institute's research center directors collect information from project directors about the performance of individual scholars. In addition, researchers submit a self-assessment that specifies their goals and accomplishments for the past year, as well as topics to discuss with their supervisor. The supervisor comments on that self-assessment and prepares a written evaluation that forms the basis for discussion with the project director.

Law firms. Peer reviews, long used in academe, medicine, and accounting firms, have only more recently taken hold in the legal profession, where some firms tie peer review to compensation and others keep the two processes separate (Middleton 1987). While the extent of peer review of partners in the legal profession has not been definitively determined, a 1995 survey of Texas law firms with ten or more attorneys revealed that 50% engage in some form of peer review, predominantly on an informal basis (Fortney 1997). Only 10% employed formal procedures other than reviews for compensation decisions to evaluate the work of principals. Many law firms view peer review as a means to limit partners' liability (Fortney 1997) and to minimize malpractice claims (Middleton 1987). Ironically, lawyers have discovered a "catch-22 in such processes — a plaintiff in a malpractice case could argue for higher liability from a firm with peer review because the process should have weeded out all the bad apples" (Middleton 1987: 10). Despite this concern, observers believe that resistance to peer review has lessened as partners see "too many claims, too many liabilities, and too many embarrassing incidents that could have been avoided if ... partners had less autonomy and individual authority" (10). According to New York lawyer and professor Anthony Davis,

> *There's a great deal of pressure on partners now. Status and power are almost as important as money to lawyers. Money is an expression of power. Collegiality falls apart when money tightens. Young, aggressive lawyers say, "We're working and bringing in the clients. We should get more than the old farts resting on their laurels." Traditional values are no longer the values of the marketplace.* (interview, January 8, 1997)

Indeed, "everyone, even partners, will be judged on performance" (Torry 1996: F07). Said one attorney at Howrey & Simon, Washington, DC's fourth-largest firm, "Instead of having a lot of entrenched partners to drag down profitability, [there'll be] more of an efficient group" (F07).

Advocates of peer review systems contend that the process improves the overall quality of a firm's work product, the delivery of legal services, and profitability (Malone 1997). More specifically, peer reviews:

- assist in the identification of substandard legal performance and, thereby, reduce the firm's risk of malpractice claims and grievances;
- enhance the quality of legal services and thus aid in the retention of clients;
- help law firms differentiate themselves from their competition by demonstrating internal accountability;
- enhance the supervision and training of new lawyers (Malone 1997);
- help promote an atmosphere of continuing professional development and "may undercut an intra-firm perception that emphasizes 'rainmaking' at the expense of other contributions" (Fortney 1996: 274-275); and
- may cultivate a team atmosphere, as opposed to a "collection of individual attorneys sharing offices" (275).

PEER-REVIEW COMMITTEES AUDIT SELECTED CASE FILES AND SOLICIT INFORMATION FROM COLLEAGUES, AND IN SOME CASES FROM CLIENTS.

Of course, peer reviews are not without drawbacks. Some lawyers complain that the process consumes too much time. In addition, law firms worry that documents generated in the review process may be harmful in the event of claims against the firm; a possible intrusion into a lawyer's freedom of practice; or misinterpreted in the compensation process (Malone 1997).

The Attorney's Liability Assurance Company, which conducts in-firm audits that serve as a model for peer reviews, reports that formal peer reviews of partners are most common in firms of 100 or more attorneys (Nelson 1996), a very small fraction of all firms. Nevertheless, some novel ideas have emerged. Typically, review processes range from compliance with established firm policies to more subjective assessments of the attorney's work. Peer-review committees audit selected case files and solicit information from colleagues, and in some cases from clients. In the Texas study (Fortney 1996), 30% of respondent firms reported collecting information from clients for use in performance

appraisal. In some firms, partners review each other as well as review associates; in a small number of firms, associates review partners. While most firms have implemented performance evaluations for associates, partners are less comfortable evaluating their peers (Denney 1995).

Despite the discomfort, many firms conduct partner reviews, but few do it well (Pierce and Williams 1989). Among the reasons cited for poor reviews are that firms lack systematic training initiatives, partners do not want to sacrifice the time required, partners sometimes lack the communication skills needed for this process, and "lawyers believe their skills are special and beyond measurement against objective criteria" (22). Once again, the echo of academe can be clearly heard.

Throughout the 1990s, most firms abandoned a "lockstep seniority system" and moved to a performance-based compensation system tied to a partner's contribution to the firm rather than to seniority (Denney 1995). This approach requires a partner-review process.

The 200-lawyer Denver-based law firm Holland & Hart has a biannual compensation-review system and a partner-review system in the alternate year (Middleton 1987). Members of the management committee meet with each partner to discuss legal ability, leadership, attitude, productivity, firm responsibilities, and other partner strengths and weaknesses. "The essence of the meeting 'is the face-to-face dialogue.' ... [T]he system confirms the management committee's perception of who is falling short" (Middleton 1987: 10). Reviews at Holland & Hart deliberately separate the performance review from "highly emotional" compensation decisions. Chicago-based Katten, Muchin & Zavis, on the other hand, conducts performance appraisals in tandem with compensation reviews to inject objective information, such as billable hours worked, with more subjective aspects of performance (Middleton 1987).

Some one to two dozen law firms ask associates to evaluate partners; among these firms, lawyers claim the process improves supervisory skills, morale, legal training, recruitment of high-quality associates, and service to clients (Bresler 1989). Evaluation forms[18] are circulated among associates at Katten, Muchin & Zavis, who then meet as a group, review the forms, filter out destructive comments, and compile summary assessments of individual partners. A department head

[18] The firm asks each associate to evaluate the partners on their ability to: "explain legal issues and evoke creativity; ability to thoroughly comprehend and apply your work; efforts to improve your general writing ability; efforts to improve your verbal skills, including arguments, trials, meetings, and negotiations; organization, efficiency, energy, and productivity; willingness to grant responsibility and to reward initiative; efforts to improve your professional judgement, maturity, and poise in dealing with clients; compatibility with colleagues and staff; whether the partner credits you to others for work you have done; willingness and ability to provide constructive criticism" (112).

or an associate then meets with individual partners to discuss the evaluations. In either case, the department head knows how partners have performed.

Kramer, Levin, Nessen, Kamin & Frankel, in New York City, as early as the 1970s required associates to complete forms with questions such as "How much does the partner care about my development?" and "Would I want to work with this partner again?" (Bresler 1989: 112). Associates then meet to discuss the evaluations and develop a consensus. At an annual retreat of the partners, the associates' composite evaluations were read aloud "to use peer pressure to improve supervisory skills" (112). Now, since the firm has grown and oral presentations have become too cumbersome, the results are distributed to all partners in a booklet at the retreat. A group discussion there focuses on discerning patterns of supervisory skills among the partners; afterward the booklets are collected and destroyed.

In an unusual review process, Perkins Cole, of Seattle, invites eight clients to participate in an annual audit. The firm sends a team of three lawyers to ask each client if and how the firm has met the client's needs. According to one partner, client audits have identified potential problems early — before inadequate performance endangers the account (Middleton 1987).

Inside the Academy

Under the direction of SUNY's Bruce Johnstone, a group of faculty senate and union leaders from the State University of New York and the California State University System found that "much of the concern that governing boards and academic officers have about tenure is of their own making: the failure to place clear and rigorous expectations on tenured faculty; the failure to evaluate on the basis of such expectations; and the failure to act ... when a faculty member ... performs clearly and consistently below those reasonable expectations" ("Public" 1996: 8).[19]

> *In order to preserve that which is constructive and even indispensable about academic tenure, and yet to lessen its perceived "downside," we support: the development of clear expectations for faculty, mutually agreed to, both before and after tenure; the evaluation of all faculty at stated periodic intervals in accord with these expectations; opportunities for constructive peer evaluations separate and apart from personnel actions as part of faculty development programs; education and training for chairs and deans in effective ways to assist all faculty, including those few who consistently underperform.* (8)

[19] This discussion paper was made possible by a grant from TIAA-CREF.

Many institutions have strengthened the performance evaluation of faculty, particularly through post-tenure reviews.[20] In fact, the Carnegie Foundation for the Advancement of Teaching, in a 1994 National Survey of Faculty Roles & Rewards, found that 46% of the institutions surveyed had implemented post-tenure reviews between 1988 and 1994, and another 28% were considering it (Glassick, Huber, and Maeroff 1997).

While a wide array of post-tenure review policies have been implemented at colleges and universities across the United States, most have a largely formative purpose and are developmental in nature. Summative reviews, in contrast, address the distribution of rewards and sanctions. "While the philosophy of most post-tenure review policies drafted today is formative, almost all have summative aspects" (Licata and Morreale 1997: 5). Regardless of their specifics, post-tenure reviews are most successful when:

46% OF THE INSTITUTIONS SURVEYED HAD IMPLEMENTED POST-TENURE REVIEWS BETWEEN 1988 AND 1994, AND ANOTHER 28% WERE CONSIDERING IT

- they have a clear purpose;
- they are designed and implemented by the faculty;
- they are formative, in that they have a built-in provision for supporting those faculty in need;
- faculty and administrators make a serious commitment of time and resources;
- the process includes valid measures to assess performance;
- they are flexible and accommodate individual needs; and,
- the institution is prepared to commit funds to reward the strongest and assist the weakest faculty. (Licata and Morreale 1997)

Summary and Questions for Discussion

This section has focused primarily on the review of professionals outside of the academy — especially post-partner review in law firms — because the New Pathways project has already covered review within the academy with its Inquiry #12, "Post-Tenure Review: Policies, Practices, Precautions," by Christine Licata and Joseph Morreale (1997). It is important to note that the review of faculty, both

[20] For an extensive presentation, discussion, and analysis of post-tenure review processes across the United States, see Licata and Morreale 1997.

pre- and post-tenure, appears to be at least as commonplace and as comprehensive as in other professions. Partner review is relatively new, and while it may help law firms identify problems of deadwood, such reviews have not produced many dismissals for cause. Nor is there much evidence of termination for unsatisfactory performance at think tanks.

Some questions to consider include these:

- What if tenured faculty members were evaluated against individual goals or work plans as well as against departmental goals, as they related to institutional mission?
- What if the evaluations of tenured/senior faculty members were read aloud at departmental meetings and faculty discussed progress with colleagues?
- What if junior faculty collectively evaluated senior faculty on colleagueship, mentorship, and their ability to communicate the departmental expectations for promotion, tenure, or contract renewal; and then those evaluations were communicated in aggregate form to the senior colleagues ? What if senior faculty members were then compensated, in part, on the basis of those evaluations?
- What if, for example, a math department asked a team of faculty members in the engineering department to evaluate how well the mathematicians teach their subject to the engineering students?
- Does the experience of professions outside academe suggest that peer review of professionals — whatever other purposes the review process serves — will produce few dismissals for performance-related reasons?

(4)
Academic Freedom and Employment Security

Outside the Academy: Academic Freedom

With the possible exception of federal judges, no professionals more routinely invoke the principle of freedom of expression, and lifelong tenure as a means to ensure it, than do college and university faculty. If comparisons to journalists and the constitutional assurance of freedom of the press are invalid — because while publication of ideas or words the government may find objectionable is protected, in theory and in practice publishers may dismiss their employees for expressing objectionable opinions or simply not publish their articles — are think tanks, then, a better analogy?

> *The claim that tenure is necessary to promote free expression flies in the face of the experience of many "think tanks," ... which have produced some of the most controversial writings of our times, including fundamental challenges to [the orthodoxy that pervades] academic social science departments. No other major contemporary American institution has the kind of intolerance for free expression that has spawned the phrase "politically correct" in academe. Yet it is academia [that] has tenure.* (Sowell 1993: 274)

Think tanks manage to attract and retain many scholars of high caliber without guarantees of lifetime employment or shared governance, and these scholars produce controversial materials without explicit guarantee of freedom of expression or the security of tenure. Academics may argue that "outsiders will have confidence in the research and output of faculty only if they believe in the independence of its authors" (Epstein and Saunders 1991: 87), but the output of think tanks "has been widely accepted by the public and has attracted financial support from private donors and government agencies. ... At the very least, academic tenure has yet to demonstrate that it produces any more courage or diversity of views than exists in professions without tenure" (Sowell 1993: 275).

DESPITE THESE CLAIMS BY THINK TANKS, THIS ANALOGY TOO SEEMS FLAWED, BECAUSE SUCH ORGANIZATIONS ONLY HIRE SCHOLARS WHO HOLD A PARTICULAR AND ACCEPTABLE VIEWPOINT.

Whatever the claims about the necessity of tenure to protect academic freedom, most scholars in think tanks are encouraged to publish without tenure — most have, at best, annual appointments — and incur no internal censorship. "The main idea is to get ideas out there, no matter how radical," said Brian Smith, vice president of administration at the Cato Institute (interview, October 1995). The Educational Testing Service has "internal review boards and processes to carefully scrutinize the work of scholars at the proposal stage and prior to publication, just as universities and journals screen and edit their scholarly work. But the nature of the review is not to squelch controversy, rather it is to assure quality," declared personnel director Sandy D'Angelo (interview, October 16, 1995). At RAND, "If we discover something controversial or unpopular, too bad; we publish it anyway. This is simply part of our charter. We never stop a project once it's under way," reveals Priscilla Schlegel, director of personnel (interview, October 1995).

Despite these claims by think tanks, this analogy too seems flawed, because such organizations only hire scholars who hold a particular and acceptable viewpoint. Thus, we have to look within the academy for relevant innovations.

Inside the Academy: Academic Freedom

A common question within the academy is whether or not academic freedom is necessary to attract a first-rate faculty. Drawing meaning from "both the world of education and the world of law," *academic freedom*[21] is a concept that "eludes precise definition" (Kaplin 1985: 180). Kaplin goes on to explain that the legal boundaries of academic freedom were initially defined by contract law, and faculty members possess whatever academic freedom is allowed under faculty contract, handbook, or institutional or state policies. The principles set forth by the American Association of University Professors in its 1940 "Statement of Principles on Academic Freedom and Tenure" are recognized and interpreted by the courts "to the extent to which those terms have become part of the faculty contract" (Kaplin 1985: 180). Furthermore, even when the AAUP language has not been included in a contract, AAUP documents "may be an important source of academic 'custom and usage,' which courts will consider in interpreting unclear contract terms" (180).

Many academic institutions, including 20% of all private liberal arts institutions (U.S. Department of Education 1997), do not have tenure,[22] yet these colleges do provide their faculty members with academic freedom[23] and due process. "With only the rarest exceptions, colleges with contract systems have formally endorsed and codified within the faculty handbook the concept of academic freedom. Many handbooks ... incorporate explicitly or by reference the 1940 AAUP Statement" (Chait and Trower 1997: 10). For faculty and union representatives, the protection of due process is the sine qua non.

> *Tenure is really just a fancy name for due process and seniority. In states where there is no tenure, and NEA is the bargaining agent, our affiliates negotiate due process protections and seniority. Due process means that once you finish a probationary period, the administration is required to show cause for discipline and/or dismissal. Typically there are also seniority provisions in the event of layoffs — last in, first out. Negotiated clauses providing binding arbitration create speedy and cost-effective resolution of disputes.* (interview, Christine Maitland, higher education coordinator, National Education Association, February 13, 1998)

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[21] For precise interpretations and analysis of *academic freedom*, see Brown and Kurland 1990; Byse and Joughin 1959; Edwards and Nordin 1979; Finkin 1996; and Metzger 1979.

[22] For a discussion of faculty life on campuses without tenure systems, including academic freedom and due process issues, see Chait and Trower 1997.

[23] For a discussion of academic freedom and a scholarly examination of necessary safeguards to protect academic freedom in an environment without tenure, see Byrne 1997.

Due process procedures, even at institutions without tenure, provide faculty with "ample protection," in the judgement of professors at those institutions (Chait and Trower 1997). Whether faculty feel secure because of adequate protection under contract and handbook language, or because of embedded traditions of tolerance for even the most controversial positions, faculty members report little concern about academic freedom, regardless of tenure status.

Medical school faculty, whether employed on tenure-track or nontenure-track lines, were also unconcerned about issues of academic freedom. "It simply isn't an issue for me, even on cutting-edge medical research. I've got more important things than academic freedom to think about," said a clinical faculty member at the Dartmouth Medical School during a recent interview. "Besides," she added, "I'm used to earning my keep. Tenure is not that meaningful to me because even full professors wouldn't be here without research grants." Said a basic science faculty member at the school, "Personally, I think tenure and academic freedom are antiquated issues. You don't have tenure at IBM or GE; what's so special about faculty members who are protected but not productive? People don't come here planning to stay forever; they don't even ask about tenure and seem totally unconcerned about academic freedom. We have it, with or without tenure."

William Culp, the medical school's associate dean for faculty affairs, stated in an interview, "We have policy language that covers academic freedom for all faculty members here by providing due process for allegations of infringements. The Academic Freedom Council has met once in 200 years. When the moratorium was placed on tenure,[24] there was hardly a ripple on campus. There's a lot of loyalty to Dartmouth among the faculty, with or without tenure." Was it more difficult to recruit faculty during the moratorium years? Culp replied, "It may have been, but when you do recruit, you know that person is coming here to be productive, not to be secure. Up until about three years prior to reinstating tenure, I remember only one instance where tenure was an issue. This was over the course of twelve years of recruiting approximately twenty people in the basic sciences. It just wasn't an issue."

A dean at Northwestern University Medical School reported in an interview, "Academic freedom and tenure are essentially nonissues for us in recruiting. I've been here for several years and

[24] Imposed in 1979, the tenure moratorium was lifted in 1993 for those promoted to full professor to improve the school's "ability to recruit and retain outstanding faculty. In the intensely competitive academic marketplace where the vast majority of medical schools award tenure to senior faculty, we believe that [Dartmouth Medical School] will fare better with tenure than without it" ("Plan for Faculty Tenure," internal document, March 11, 1993, p. 5).

I haven't heard a single story about anyone who failed to come because of the lack of tenure or concerns about academic freedom. These faculty are working so hard, they just don't think about it. They're bright, and they don't do esoteric research." Likewise, at Brown University's School of Medicine, Lois Monteiro, associate dean of medicine for faculty affairs, noted, "Faculty do not come here asking about academic freedom or tenure. Some expect it for very senior positions, but we're still able to recruit for these without tenure. There are no concerns about academic freedom. Quite simply, people are focused on other things."

"People have asked about rank, but not tenure and certainly not academic freedom," observed an associate professor involved in hiring faculty members at Dartmouth Medical School:

> *We want people who are dedicated to the institution, the institutional agenda ... not a personal agenda. Personally, I think there are trade-offs with tenure and academic freedom. They sound great in theory, but we have to focus on accountability and productivity. Rent control is an appropriate analogy. Here's a broad, sweeping policy to help people find low-income housing. But why not deal with low-income housing itself? [Rent control is] not helping those who need it. If academic freedom is really the issue, then protect it in other ways. Why link it to tenure and create all sorts of other problems?*

These views were echoed in a study of faculty attitudes toward tenure and academic freedom at private universities. The study reported that faculty saw tenure and academic freedom as separable issues that can be "decoupled." Respondents rated tenure highest as a measure of employment security and due process, and rated themselves as the primary protectors of academic freedom. Its author argued that separating academic freedom and tenure "could lead to b[illegible]er employment practices and the expansion of academic freedom to all faculty, tenured and nontenured" (Keith 1997: 3).[25]

Outside the Academy: Employment Security

One need not look far, or at too many headlines, to see that long-term job security is largely passé in most professions. In accounting, for example, "Many firms have handed out pink slips to partners, including some wooed from competitors in better times. The top 100 accounting firms alone have

[25] In Chait 1998, Martin Michaelson, partner at the Washington, DC, law firm Hogan & Hartson, offers sample handbook language designed to contractually guarantee academic freedom without tenure.

jettisoned 557, or 4.5%, of their partnership positions [in 1991]" (Cowan 1992: D8). In the corporate sector, health care, and government there has been downsizing and restructuring. "For tenured faculty to enjoy guaranteed, lifetime security, when no other segment of the economy shares that assumption, strikes many laypersons as an inexplicable privilege at best and an arrogant offense at worst" (Chait and Rice 1997: 3).

Law firms. Before 1970, law firms compensated attorneys in a lockstep fashion. Again, Anthony Davis: "If you were in the class of 'X,' you received 'X percent' or 'X dollars.' There was a bell-shaped curve that was clearly defined. It didn't matter how many hours one worked or how many clients one brought in, one was paid 'X' at that stage in one's career." However, as law firms evolved and became increasingly "businesslike," compensation became more subjective.

> *A group of partners got together and decided: "X" dollars for you and "Y" dollars for someone else. Now, there is typically a more objective formula with a little pot that's subjective. ... Firms look at hours worked on client matters, hours worked on management matters, dollars billed and collected that you worked on, and dollars billed and collected that you originated. ... [There] is no more uniformity. Most firms have elements of all three [lockstep, subjective, subjective/objective] but have moved away from the lockstep plan. And, as a result, lawyers have lost their security.* (Davis)

The same applies to partners. As firms have abandoned lockstep or seniority compensation systems and have implemented performance-based pay, the compensation of partners has changed.

> *When a partner has an adequate volume of available client work but has not performed at the expected level, the firm may need to reduce that person's draw accordingly. In many offices, the solution is to keep the problem partner's income at a constant level, while the percentage or points assigned to other partners increase. Under some circumstances, firms reallocate billing and revenue-production targets and compensate the partner in direct proportion to the partner's contribution. Most firms allow the problem partner to reestablish his or her former compensation by improving performance and increasing production and billings.* (Rose 1994: C12)

If improvement does not occur, a partner's responsibilities may be reassigned, compensation may be reduced, equity status may be discontinued, the partner may be asked to take an unpaid leave of absence, or (rarely) the partner may be terminated. "Most law firms today are less willing than before to tolerate [problem partners]" (C13).

In the past, "becoming a partner in a law firm ... was almost better than getting tenure at a university. The promotion guaranteed job security, prestige, and a large, steady income" (Cowan 1992: D1). "Partnership status, which like academic tenure has traditionally been a virtual guarantee of lifetime employment ... suddenly is no longer synonymous with job security." Emulating corporate

"ruthlessness," law firms are thinning the partnership ranks in what is now seen by some as the "most efficient way to improve profits" (Saltzman 1990: 67). Increasingly, less-than-productive partners are viewed as an "expense," and therefore expendable (Torry 1996: F07).

Just ten years ago, forcing out partners was "unthinkable" (Torry 1996: F07). The practice of law "always held itself above the economic fray, insulated from the vagaries of the marketplace" (Kaufman 1990: A19). However, the 1990s tell a new story. In 1990, the "axe fell" on twenty to twenty-five associates at a distinguished law firm, after it advised them they were "surplus" (Kaufman 1990). In 1992, Chicago-based Winston & Strawn forced out more than twenty partners who had not added clients. In 1994, another Chicago firm, Wildman, Harrold, Allen & Dixon, discharged ten equity partners in order to reward rainmakers with pay raises (Duncan 1994); a spokesperson for the firm claimed that the move was necessary to compensate the most-productive partners appropriately. In 1996, in response to market forces, Howrey & Simon, the fourth-largest law firm in Washington, DC, dismissed five of 100 partners and placed another eight on fixed compensation without a chance to share in the firm's profits (Torry 1996).

Think tanks. Scholars in think tanks, hired on a year-to-year or project-to-project basis, do not enjoy job security either. Although dismissals are rare, these scholars are expected to attract the funds necessary to support their salaries or to leave. Kathleen Savage, at the Urban Institute, again: "Scholars are expected to bring in the funding needed to support their research. If they don't, they know they'll have to leave." At RAND,

> *Scholars must make progress on their initiatives. If there is a shift in priorities at RAND, employees may decide to shift their research emphasis to meet the need. Typically, as long as a researcher's project is funded, they have a job. If a contract ends, employees are given time to find something else, but they have to be productive.* (interview, Schlegel, October 1995)

At the Educational Testing Service, "Contracts are for a specified time period. There is no expectation of employment beyond that time period, unless the project needs to be continued, and then another contract may be issued" (interview, D'Angelo, October 1995).

Inside the Academy: Employment Security

Within the academy, medical schools and academic health centers face perhaps the greatest challenge, as managed care squeezes revenues and revolutionizes delivery systems. Changes in the structure of medical schools in the last thirty-five years have been "truly staggering":

> *At one time, medical schools relied on general operating revenues ... for about half their budgets. The other half came from grants and contracts, primarily from federal sources. Today, on average, 75% of a medical school's budget is generated through general operating revenues and 25% through grants and contracts.* (Bland and Holloway 1995: 31)

In addition, by 1995 "hospital reimbursements and medical service plan dollars accounted for 44.5% of medical school revenues (1993 totals). This represents a dramatic shift toward reliance on clinical income" (31) — i.e., income generated by clinical faculty. Now, however, with the growth of managed care and an emphasis on cost control, clinical care through medical schools must become competitive and less lucrative:

> *Clinical professors are having a tough time attracting patients, since HMO's often refuse to contract with teaching hospitals, where sophisticated equipment and medical expertise can drive up the cost of health care. Meanwhile, the competition for federal grants among basic science researchers has heightened. And financially strapped state and local governments are limiting, or cutting, their support for medical schools.* (Mangan 1996: A16)

Medical schools are "saddled with too many faculty members who are not generating enough revenue to support their departments" (A16). As a result, the schools are making drastic changes to compensation plans — and redefining the meaning of tenure in the process.

Perhaps the most publicized case is that of Daniel Kirschenbaum, professor of psychiatry in the Department of Psychiatry and Behavioral Science at Northwestern University's Medical School. In a "purely economic decision" (Kantrowitz and Rhodes 1997: 69), Kirschenbaum's employment contract was not renewed. Under that contract, he received no benefits, and the contract clearly stated that his base salary was zero; like many other clinicians, he earned his compensation from his medical practice, first at Northwestern Memorial Hospital and later at the Northwestern Medical Faculty Foundation. But he did have tenure (technically) at Northwestern. Kirschenbaum sued the university, claiming that his contract had been breeched because he had not been paid since 1992. A brief filed by Northwestern asserts,

> *The documents that form the tenure agreement between Kirschenbaum and Northwestern provide only for one right that accompanies tenure – "an indefinite term of appointment." Otherwise, the contract is silent with respect to whether a tenured faculty member has a* right *to conduct teaching, research, writing, and related activities. Kirschenbaum taught only one class as a tenured member of the Northwestern faculty ... for which he received no salary from Northwestern. It is well-settled that tenure "does not give any greater rights, either substantive or procedural, than the policy that defines its terms."* (*Kirschenbaum* v *Northwestern*, 93 CH 8206 (Cook County, IL Cir. 1997)).

The case was dismissed on July 17, 1998, when an Illinois judge ruled against Kirschenbaum, stating that there was "no evidence ... that Northwestern University breeched any expressed or implied contractual obligation it owed to plaintiff. The contract documents are unambiguous." (*Kirschenbaum* v *Northwestern*, 93 CH 8206 (Cook County, IL Cir. 1998)).

In another case, seventeen tenured faculty members at the University of Southern California School of Medicine alleged that a decision by the medical school to reduce faculty contracts from twelve months to nine months (with a 25% reduction in salary) violated their contract rights (Bodner 1997). While there have been relatively few decisions relative to salaries and tenure — i.e., whether tenure entitles faculty members to certain salaries — it "is reasonably clear that tenure is nothing more or less than a creature of contract ... tenure need only mean what the medical school chooses it to mean" (Bodner 1997: 968). Furthermore,

> *As a general legal principle, if a medical school has made it unequivocally clear in its tenure rules that tenure does not protect full salary, its so-called "past practices" may play little or no legal role in defining the implication of tenure for salary at that medical school.* (969)

THERE HAVE BEEN RELATIVELY FEW DECISIONS RELATIVE TO SALARIES AND TENURE I.E., WHETHER TENURE ENTITLES FACULTY MEMBERS TO CERTAIN SALARIES

Bodner also concluded that medical schools should not "assume that they are legally bound to pay forever the full salaries of tenured faculty, especially if those faculty are nonproductive or unfunded," and that "reductions in the salaries of tenured faculty are legally achievable" (971). Clearly, the Northwestern and USC cases will be bellwethers.

Since tenure has long rested on two legs — academic freedom and employment security — many are concerned about the erosion of that security and the implications if tenure no longer guarantees a base salary. A large proportion of clinical faculty in medical schools are not now in tenure tracks, and whether these faculty need tenure is an "open question," says Paul J. Friedman, professor and dean for academic affairs at the University of California-San Diego's School of Medicine (as quoted in Jones 1993: 589). These faculty have "tenure of title," meaning they have a right to continue in a position as long as they can provide their own support. They do not have salary security, but they do have academic freedom. The question then becomes, "Can the protection of salary be encompassed within the purpose of protecting academic freedom?" (Bodner 1997: 966). According to Bodner, the answer is, "Usually not; the current

situation is almost always one in which cost concerns, not political ones, motivate medical schools to reduce the salaries of faculty with reduced funding or practice income" (966). While it is clear, at least in Bodner's view, that "tenure was not intended to protect full salaries at most medical schools" (966), the question remains, Should tenure protect the base salaries of those faculty outside of the medical school; and if not, what then does tenure mean?

Controversies about compensation are centered at medical schools for the reasons mentioned previously. Medical school deans became especially concerned about financial guarantees after the elimination of mandatory retirement (Bickel 1991: 250). While "the vast majority of [medical] schools reported that they defined tenure to provide not just a continuing appointment but also a financial guarantee" (Jones and Gold 1998: 92), a 1997 survey conducted by the American Association of Medical Schools indicated that tenure offers no financial guarantee at 15% and 18% of all medical schools for basic and clinical sciences faculty, respectively. Where a financial guarantee of tenure was offered, it was clearly defined:

> *For basic science faculty, 29% of the schools that associated tenure with a financial guarantee defined it as "total salary/compensation regardless of sources of funding." Another 28% of schools guaranteed that portion of salary/compensation that was derived from university or state funds, while 19% guaranteed a "base salary," variously defined. A small number ... defined the salary guarantee as equal to an internally or externally referenced standard ... [such as] the average salary (by rank) of an institution's basic science faculty.* (93)

Jones and Gold concluded that, with some exceptions, "where tenure provides a financial guarantee for basic science faculty, that guarantee very often covers their total salary or a figure close to it" (93). For clinical faculty, on the other hand, "only nine schools indicated that tenure guaranteed total salary/compensation ... regardless of sources of funding" (93). Normally, medical schools exempt from the tenure guarantee that portion of compensation associated with a faculty member's clinical practice.

That 1997 survey also revealed that nearly half of the nation's medical schools have modified, or were considering modifying, their faculty compensation plans to (1) divide compensation into various components; (2) associate each component with different levels of financial guarantees; and (3) link compensation to measures of individual and group productivity (Jones and Gold 1998: 95).

> *Medical schools seemed to be, more clearly than in the past, defining what pay was for, making explicit how the faculty member shared risk with the division, department, and school for the success of their endeavor, and creating a framework in which pay could be reduced in the face of diminished productivity.* (95)

In a fairly common approach to clinical faculty compensation at medical schools — the so-called "*x*, *y*, *z* plan" — *x* represents base salary, *y* a supplement for clinical earnings, and *z* a bonus or incentive payment. What is new, however, is that the *y* and *z* components "are being developed to provide incentives for productivity and quality not only in clinical practice but also in teaching and research" (96).

Medical schools are not the only arena of discussion of changes to base salary guarantees associated with tenure. In 1996, the University of Minnesota faculty agreed that salary reductions might be warranted in severe cases of unremediated substandard performance identified through a post-tenure review process (Farber 1997: 9). Similarly, James Madison University (Policy 2111, "Post-Tenure Review of Instructional Faculty") and the University of Colorado ("Administrative Policy on Post-Tenure Review") both consider salary reductions to be an appropriate response to a faculty member's failure to comply with the terms of a plan for improvement.

Other academic institutions have redefined standards for dismissal for cause, typically to set a realistic performance-based threshold for the removal of tenured faculty. Colby-Sawyer College revised its handbook in 1995 to include "teaching incompetence" as a criterion for the dismissal of tenured faculty. Before faculty are terminated for ineffective teaching, "they will be given an opportunity to improve rather than being dismissed immediately, as is the case [under] Dismissal for Cause" (Faculty Tenure Proposal Committee 1995: 2). In 1993, Ithaca College added "serious instructional difficulties" to the list of reasons for termination of tenured faculty. According to its faculty handbook (effective August 16, 1993), if an annual peer evaluation of a tenured faculty member "manifests the existence of serious instructional deficiencies [that] are deemed likely to persist, the dean of the faculty member's school must consult with the faculty member." If the dean agrees that serious deficiencies exist, the college impanels a schoolwide peer-review committee to evaluate the faculty member, document areas for improvement, and communicate the results to the dean and the faculty member. The faculty member then devises a plan to overcome the identified deficiencies over the course of a semester. If the professor makes sufficient progress, no further action occurs. Otherwise, "a range of actions may be appropriate, up to and including a letter of dismissal" (58). The North Dakota Board of Higher Education in 1995 approved a provision in its policy manual to include "continued or repeated unsatisfactory performance evaluations and failure to respond in a satisfactory manner to a recommended plan for improvement" as part of the definition of "adequate cause" for dismissal.

While only a few institutions have added unsatisfactory teaching as grounds for dismissal, many have created nontenure-track appointments with a stated, and finite, contractual term of employment quite apart from tenure. The most recent government data (U.S. Department of Education 1997) revealed that faculty appointments classified as nontenure-track increased from 18.6% in 1975 to 27.3% in 1993. Over the 1987 to 1992 period, 18% of all institutions replaced some tenured or tenure-track permanent, full-time instructional faculty and staff positions with fixed-term contract positions (U.S. Department of Education 1996).

Finally, those with the least job security — part-time faculty[26] — increased dramatically in number between 1987 and 1992. In 1987, some 33.1% of all instructional faculty were employed part-time; by 1992, the percentage had increased to 41.6% (U.S. Department of Education 1997).

THOSE WITH THE LEAST JOB SECURITY — PART-TIME FACULTY — INCREASED DRAMATICALLY IN NUMBER BETWEEN 1987 AND 1992

Questions for Discussion

Some last questions to ponder:

- Should the protection of academic freedom and due process be extended fully to all faculty, regardless of tenure status? If so, how? Do the benefits of doing so outweigh the costs?
- Can faculty members without tenure fully uphold the integrity of the system, or is reciprocity always an issue?
- Should faculty salaries be tied, at least in part, to departmental productivity? Individual productivity? Both?
- What does tenure mean in the absence of a salary guarantee?
- Can and should the standards for dismissal for cause be reformulated to focus on performance standards? Would this resolve the deadwood problem without compromising basic tenure principles?

CONCLUSIONS

The purpose of this paper is to highlight changes in policies and practices, inside and outside the academy, worthy of further consideration by colleges and universities. More transferability from one

[26] For a full discussion of part-time faculty, see Gappa and Leslie 1993.

profession to another, as well as greater adaptability within higher education, may exist than most critics of the academy acknowledge.

Major Developments

The 1990s have produced significant environmental changes that have prompted modifications of employment practices in the professions. Neither the external pressures nor the internal reforms seem likely to abate. A summary of the major developments to date follows:

Alternative career paths. Perhaps the most dramatic change has been the proliferation in career path options. The age-old up-or-out structure in law firms has been drastically modified to afford a variety of new titles and career choices for new attorneys. As the partner ranks swelled and the economics of practicing the law changed, many firms had no choice but to dismiss numerous talented attorneys. Now there are alternatives, and it is no longer considered second class to pursue a course other than "associate to equity partner."

A similar transformation, for similar reasons, is occurring in academe. The ranks of long-term nontenure-track and part-time faculty are swelling. In addition, the traditional lockstep, six-year probationary period that leads to an up-or-out tenure decision no longer applies everywhere. Probationary periods vary from less than five years (22% of all institutions) to seven years (34%) to more than seven years (5.2%) (U.S. Department of Education 1997). A 1995 survey of 375 institutions showed that 80% of the "leadership colleges" in family-friendly policies and 39% of "others" allow faculty to stop the tenure clock for childbirth, family care, or illness (Wilson 1996). Many faculty will not reach a tenure decision or progress lockstep from assistant to associate to full professorship because there are new pathways and new titles. While many young academics appreciate the new options and choices, others are dismayed to find that tenure-track positions and traditional titles are scarce.

Workload and productivity. In law firms, as the notion of a lifetime partnership has eroded, so too has unquestioned autonomy. Law firms can no longer ignore partner productivity. In New York, the workload of city judges has come under increased scrutiny, with an eye on caseload productivity. Even some doctors and dentists now are measured by the number of patients treated, in addition to the quality of care provided. In academe, the balance of research and teaching is being

reconsidered, and many states are conducting comprehensive reviews of faculty workload. Some states are withholding money until faculty workloads are adjusted.

The emphasis on increased productivity has raised a pivotal question: At what cost? Many HMOs face lawsuits from patients complaining of shoddy, if "efficient," health care. Many HMO physicians increasingly are frustrated by loss of decision-making power, a concern that has stimulated the formation of physician unions in some areas. What will happen to the morale of professionals forced to comply with productivity standards imposed from outside? What will happen to the quality of higher education if faculty morale diminishes even as productivity rises? Can the highest quality be sustained under such conditions? Has the pendulum swung too far?

Peer review of professionals (post-partner and post-tenure). It was almost inevitable that heightened emphasis on productivity would trigger increased evaluation of performance. Think tanks review scholars in much the same way as corporate professionals' performance has been judged: with annual evaluations comparing goals with outcomes. Law firms are relatively new to the peer review process. While still experimenting, many law firms believe the benefits outweigh the drawbacks. However, some traditionalists resent the intrusion, and believe that partners should be beyond such measures.

Peer review is hardly new to the academic world, which has a long-standing tradition of review for promotion, tenure, and salary increases. What is new for many faculty members, however, is formal post-tenure review, especially tied to reward or remediation. Post-tenure reviews have spread rapidly. The next phase will be to "perfect" post-tenure review and to ensure that such processes have meaningful and demonstrable effects that transcend any cosmetic, public relations value in stemming further attacks on tenure.

Academic freedom and employment security. Throughout history, tenure has protected academic freedom, job security, and to a large extent salary. However, those notions are under review. Some institutions provide academic freedom without tenure, and some scholars and lawyers have proposed new ways to ensure due process for all faculty (for example, see Byrne 1997; Michaelson in Chait 1998).

The term "job security" has almost become oxymoronic. Many professionals downsized from large corporations in the 1990s would be disinclined to use "security" in describing their jobs then,

and perhaps their jobs even now. In law firms, partners (once assumed to be secure until retirement) now are being pressed or forced to leave to improve profitability. And in medical schools, the link between tenure and salary is being redefined.

To predict the future of tenure is notoriously perilous. Nonetheless, Stanford's Donald Kennedy foresees that "Tenure may be dying of natural causes. The most striking change in faculties over the past thirty years has been a gradual but inexorable increase in the number of faculty members who not only lack tenure but will never get it — and in many cases don't expect it" (1997: 138). Others are even more dramatic: "Tenure as we know it is on a collision course with reality. We need a different system, one that respects the value of all faculty members, that responds to their diverse objectives, and that is fiscally responsible" (Richard A. Cooper,[27] in Jones 1993: 592).

MANY PROFESSIONALS DOWNSIZED FROM LARGE CORPORATIONS IN THE 1990S WOULD BE DISINCLINED TO USE "SECURITY" IN DESCRIBING THEIR JOBS THEN, AND PERHAPS THEIR JOBS EVEN NOW.

The very meaning of tenure is under review. Is tenure necessary to protect academic freedom? To attract the best scholars to academe? What should tenure provide? If it were not for tenure, would faculty salaries have to rise, and with them the cost of a college education? Are there ways other than tenure to give faculty a certain degree of employment security? Could long-term renewable contracts be the answer?

Through a combination of gradual erosion and tumultuous earthquakes, the terrain of employment practices in the professions is shifting, never to return to its previous configuration. Medicine, law, the judiciary, think tanks, and academe have seen notable employment policy changes in recent years. These changes yield as many questions as answers. Today's solutions may well be tomorrow's problems, requiring yet new solutions.

So, can this old dog learn some new tricks? Given American higher education's historic resiliency and responsiveness, the answer must be yes. Maybe it will even leave first paw prints in the fresh snow, as the leader in its pack. ■

[27] Also a physician, Cooper is dean and executive vice president at the Medical School of Wisconsin.

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